



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

GAME PROTECTION
AND PROPAGATION
IN AMERICA
BY
HENRY CHASE



GAME PROTECTION AND PROPAGATION IN AMERICA

A HANDBOOK OF PRACTICAL INFORMATION
FOR OFFICIALS AND OTHERS INTERESTED IN
THE CAUSE OF CONSERVATION OF WILD LIFE

BY

HENRY CHASE

AUTHOR OF "POWERS, DUTIES AND WORK OF GAME WARDENS,"
"MODERN DOCTRINE OF GAME PROTECTION" "PRIVATE
PRESERVES IN AMERICA," ETC.



PHILADELPHIA & LONDON
J. B. LIPPINCOTT COMPANY

1913

UNIV. OF
CALIFORNIA

SKETCH
C5

COPYRIGHT, 1913, BY J. B. LIPPINCOTT COMPANY

Published September, 1913.

**PRINTED BY J. B. LIPPINCOTT COMPANY
AT THE WASHINGTON SQUARE PRESS
PHILADELPHIA, U. S. A.**

TO THE
LIBRARY OF
CONGRESS

PREFACE

GAME protection, as the term is understood in this country, consists largely in the enactment and enforcement of statutes regulating the time when, the manner and means by which, and the amount of, game that may be killed or taken by the public. These statutes are enforced by recognized officers of the State. Hence, most of the questions and problems involved in game protection are matters of law, with collateral practical questions of fact and science. In the following pages the author has attempted to discuss these questions, and point out such as have been settled by the authorities, both legal and scientific. Within recent years a large number of legal points have been settled by the appellate courts of the country, which has served to clarify them and dispel doubt. It is believed that every important case of this kind has been examined and the information adduced therefrom used in some portion of this work.

In proceeding with the work of game conservation, at almost every step the protectionist finds

iii

282246

PREFACE

himself confronted with some sort of handicap, or serious problem, but undoubtedly the most difficult task is the maintenance of proper and continuous enforcement of the laws. However, it is thought that practically all these difficulties can and will be surmounted when a sufficient number of unselfish persons take an active interest in the cause of game protection.

In collecting material for this volume the author acknowledges special indebtedness for the valuable publications of the United States Biological Survey. For practical information he has relied upon his own private study and experience of many years in the field in an official capacity and that of others similarly situated.

HENRY CHASE.

BENNINGTON, VT., May 18, 1913.

CONTENTS

CHAPTER	PAGE
I. EDUCATING THE PUBLIC—A FOREWORD	I
II. WHY PROTECT THE GAME ?.....	9
III. RELATIONS OF BIRDS AND MAMMALS TO THE NATIONAL RESOURCES	20
IV. PRESENT MEANING OF THE TERM GAME PRO- TECTION	26
V. BRIEF SURVEY OF GAME LEGISLATION IN AMERICA	38
VI. "SANE, SIMPLE, AND SCIENTIFIC GAME LAWS"..	47
VII. FEDERAL PROTECTION OF MIGRATORY BIRDS....	60
VIII. PROTECTION OF BIRDS BY INTERNATIONAL TREATIES	72
IX. STATE LAWS AND THEIR ENFORCEMENT	83
X. FIELD-WORK OF GAME OFFICERS.....	109
XI. INTERESTING PROBLEMS	134
XII. THE RIGHT OF PRIVATE PROPERTY IN GAME....	139
XIII. PRIVATE GAME PRESERVES IN AMERICA	153
XIV. RESTOCKING GAME COVERS.....	168
XV. PROPAGATION OF GAME FISH	180
XVI. POLLUTION OF FISHING WATERS	194
XVII. FEEDING GAME DURING SEVERE WINTERS.....	204
XVIII. HUNTING ACCIDENTS	215
XIX. FIGHTING FOREST FIRES	224
APPENDIX	232

GAME PROTECTION AND PROPAGATION IN AMERICA

CHAPTER I.

EDUCATING THE PUBLIC—A FOREWORD

AT a late session of the Legislature of Vermont, a member thereof arose in his place in the House of Representatives and proposed to abolish all the game laws of that State except those which were intended to protect song birds. This was, indeed, an extraordinary manifestation of the spirit of the times. And it is significant of the general lack of information on this subject. To think that in these days of general diffusion of knowledge, an intelligent, and probably conscientious, legislator should favor such a proposition is astonishing, and goes to show the absolute necessity of educating the public on this vital problem. And yet that act was not without its encouraging feature to the game protectionist. It proved that this legislator did appreciate the value of the song birds at any rate, and we may

TO WILD ANIMALS GAME PROTECTION

now hope to convert him to the larger view of the subject. While the lamp burns the humblest sinner may yet return.

After years of work, struggle, and sacrifice, the advocates of conservation of our wild life have at length definitely agreed as to what is the most pressing need of the hour to forward this great movement. That need is *education*. Education of the masses of the people, education of public men, education of children, and enlisting the interest of the fair sex whose tender sympathy for dumb animals has done so much in the past for the prevention of human cruelty.

During the past decade, undoubtedly the most helpful agency in educating public opinion in this country has been found in the United States Bureau of the Biological Survey. With the means at hand the accomplishments of the bureau have been, indeed, remarkable. If the department's appropriation had been larger it could have done much more, but when we take into consideration the small amount of funds at its disposal it must be admitted that it has accomplished wonders.

The first thing the bureau did when organized

EDUCATING THE PUBLIC

was to acquire accurate and reliable data through the field work of its experts, and then this information was published broadcast throughout the land by means of pamphlets and bulletins.

Before this systematic work was inaugurated, there was much speculation among theorists in each State on nearly every topic of game protection. Few or none of the State game commissions had experts connected with their departments from whom reliable information could be obtained. The departments were often in charge of or under the control of politicians, and were used many times for political purposes. Of course, this was a serious mistake, and injured the cause of conservation rather more than it furthered it. But this phase of the service is now passing, we are thankful to say.

Here, then, is a valuable "pointer" for future work of the States. At the present time the education of public opinion is in a more or less chaotic state, and is left mostly to public-spirited citizens who are interested in this vital problem. Naturally, many of these good citizens are poorly equipped for this labor, and do not possess proper training and knowledge to aid the service. They have varied and different

GAME PROTECTION

ideas and views, and disseminate considerable incorrect and conflicting information, so that the general public scarcely knows what to believe on the subject. Now, it is a simple business proposition how this can be changed and public sentiment directed into proper channels.

The federal authorities are always happy, and it is their duty, to co-operate with those of the States in their work for better game protection. So it is manifest what should be done. Connected with the game department in each State there should be a bureau of education and publicity, presided over by an expert. With these bureaus co-operating with each other and with the national one, a campaign of education along correct lines can be conducted which will accomplish more and better results in a few years than has been done altogether in the past. This plan would be no experiment with which to waste State funds either. It has now had the benefit of years of trial; it has been systematized; it has a well-defined and definite course to pursue; and has not been found wanting in efficacy. Unquestionably, nothing can be of more value to the cause of game protection at this time than a systematic campaign of education conducted

EDUCATING THE PUBLIC

officially by the game departments in every State in the Union, and an extension in the work on that line now being performed by the federal bureau. It is earnestly to be hoped that such a campaign may be started forthwith.

When we look back upon the struggles of the pioneers in the service of game protection, and see how they were at first termed "cranks," and then when they became too militant in their methods of procedure were considered public enemies; when we also remember the number of brave, unselfish men who sacrificed their lives for this cause in the field of action, and how others have been abused, maligned, and ill-treated for doing their simple duty, it is all very clear what caused it—nothing but lack of knowledge of the public value of game protection. It would seem that common-sense would dictate that the only way to correct this condition would be by a systematic campaign of education. Those States particularly which have lost their officers in the field owe it as a duty to the memory of these faithful servants, and a responsibility to the living ones now engaged in service, to protect them in the future against such attacks, by making every effort to overcome the difficulty which

GAME PROTECTION

lies at the foundation of the trouble. This can be done principally by a campaign of education. Therefore, let the campaign be at once started and proceed in its valuable work.

That the above view of the necessity for a systematic campaign of education is shared by most of the eminent and practical men of the nation interested in the cause of protecting the wild life, cannot be doubted. In 1907 Dr. H. W. Henshaw, now chief of the Biological Survey, called the attention of the country to the matter in regard to saving the valuable song and insectivorous birds in these brief and concise words:

Most of our States have laws which, if fully enforced, would go far to secure adequate protection for birds. The wholesale destruction of our songsters and insectivorous birds for millinery purposes has been largely stopped, although even now in some States the statutes are frequently violated by unprincipled bird hunters for the sake of gain. But laws, while wholesome and necessary, are not so effective for the protection of birds as an enlightened public sentiment. In a country like our own, where education is general, a knowledge of the part birds play in the economy of nature is more effective for their protection than are any laws, however well administered. Instruction of this kind should be given to every school child in the land, and it is gratifying to note that the importance of this practical side of nature study is fast

EDUCATING THE PUBLIC

being recognized by educators. When the value of birds is universally known and they are everywhere cherished as friends, protective laws will be comparatively unimportant.

It was in 1907 that Dr. Henshaw penned these words, but to show that we are yet a long way from being able to dispense with protective laws, and that such laws should go hand in hand with systematic education, we desire to quote a line from the report of the Audubon Society of North Carolina for the year following—1908. In giving a list of offenders prosecuted by the Society that year we note the following: "Killing robins in close season, 25; killing cuckoos, 2; killing catbirds, 1; killing bluebirds, 2; killing mocking birds, 1; killing cedar waxwing, 2; killing purple martin, 1; killing snowbirds, 1; killing chipping sparrows, 1; killing killdeer, 1; killing cardinal grosbeaks, 2; killing flickers, 2; killing nighthawks, 1; etc." Just contemplate, if you can with equanimity, that list of outrages on humanity! Imagine, if you please, having an open season for robins in a civilized community! Think of intelligent human beings in the year 1908 killing bluebirds, catbirds, mocking birds, cuckoos, purple martins, and cedar waxwings, and

GAME PROTECTION

then tell us why they do this! Do they need education? Is it true that Americans have advanced so far in education as not to need any more instruction on this line?

And there is no ground for idle speculation as to what has caused the great decrease in the number of birds in this country. The facts are too patent to warrant dispute. Aside from the loss they have suffered from their natural enemies, such as vermin, cats, dogs, and the elements, the principal and responsible agency contributing to the destruction of the birds has been thoughtless men and ignorant boys. Those who are capable of education should be trained at once, and the others should be impressed by the stronger processes of law by being immured in some close prison cell till they have fully realized the enormity of their offences.

CHAPTER II.

WHY PROTECT THE GAME?

VARIOUS ASPECTS AND VIEWS OF THIS INTERESTING QUESTION

IN propounding the above question the word "game" is not used to denote merely those quadrupeds which are hunted by sportsmen, but the wild life of forest, field, and stream in general. In law all animals *feræ naturæ* (of a wild nature), including the quadrupeds, birds, and fish, are classified as "game," and this is the sense in which the term will be applied throughout this work. Whole volumes, and many of them, have been written in answer to this important, present-day question in this country, but we can only treat the subject in a somewhat limited way and present the accepted views. There are two ways of looking at the question: (1) from the stand-point of the sportsman—the person who is fond of hunting, fishing, and roaming the woods for recreation and pleasure, and desires the game preserved and protected for his own personal enjoyment (a rather sel-

GAME PROTECTION

fish view, as we must all admit); and (2) from the point of view of the scientist who is constantly searching out the secrets of Nature which may be utilized for the benefit of mankind. Decidedly the latter view is most worthy and interesting. In law it has been held that it is the duty of the State to preserve the game within its borders as a valuable food supply held in trust for the benefit of all the people of the State.

We may assume, then, that in the United States it is now the settled opinion of all well-informed persons that the game of a State has a four-fold value to its people, as follows: first, the value of birds to all the people as insect, rodent, and weed-seed destroyers, thus assisting our vegetable and other crop producers and preserving our fast-diminishing forests; second, the value of game quadrupeds, certain birds, and fish as food assets; third, the value of all game as an incentive and inducement to an out-door life whereby man may recuperate his powers and renew his health; fourth, the value of game in an economic and financial way to a State because of the tourists' and sportsmen's travel attracted thereby.

WHY PROTECT THE GAME?

Let us consider some of these views more extensively. As to the birds:

All around us, says a well-known ornithologist, is a vast army plotting, planning, waiting for a chance to rise and annihilate the human race. It simply is a case of history repeated, a thing that has happened before, and which gave mankind its right to rule the earth. There was a time when mankind was in the minority, so much so that it was not recognized as a factor in the battle of life. The powers that ruled were careless and destructive of those forces which were the natural enemy of man, and now has come the time when man has taken the superior position of conqueror and is regarding with disdain those forces which are its natural protectors and the natural enemies of the new power. This friend of man is the bird, the enemy is the insect, and, according to the prophecy, within the next ten years, if nothing radical is done to protect the birds, they will become extinct, and man will be forced to yield to an enemy which will be able, unchecked, to conquer the world and destroy mankind in an incredibly short time, probably in one crop-growing season.

The American medical profession has long recognized the value of birds to mankind, and its members are and long have been in the forefront as proponents of game protection. The *Journal of the American Medical Association* calls attention to the matter of protection of certain birds in these words:

The cosmic scheme is one of most intricate interrelation, in which the fact that living things are organized

GAME PROTECTION

to prey on one another plays a most important part. Man's activities in modifying this scheme produces far-reaching results, generally unforeseen, sometimes disastrous for him. When, for example, we cause the wholesale destruction of harmless snakes, we shall find in consequence a vast over-production of grain-destroying rats and mice, such as are the natural prey of snakes. The brutal and insensate destruction of birds, to take another example, is followed by an incalculable increase in disease-conveying and otherwise pernicious insects.

This observation is apropos of an important investigation made by W. L. McAtee of the Biological Survey, which demonstrated that our shore birds throughout the Eastern United States are fast vanishing. Of these long legged, slender billed, and usually plainly colored birds there are more than sixty species in North America. They frequent the shores of all bodies of waters, large and small; but many of them are equally at home on plains and prairies.

Numerous species formerly swarmed along the Atlantic coast and in our prairie regions; their extermination now seems imminent, so scarce have they become. The black-bellied plover was in great numbers along the Atlantic seaboard years ago; it is now but a straggler. East of the Great Plains the golden plover was once abundant; it is now rare. Great flocks of long-billed dowitchers formerly wintered in Louisiana; one sees now but flocks of a half-dozen or less. The Eskimo curlew has probably been exterminated in the last decade, and other curlew species are greatly reduced.

The wonder is that any of these birds survive, so adverse to their existence are present conditions. In both fall and winter they are shot along the route of their North and South migration. They decoy readily and persistently, despite murderous volleys. The breeding grounds of some species have become greatly restricted by the

WHY PROTECT THE GAME ?

extension of agriculture, and their winter ranges in South America have no doubt been restricted in like manner. In several other ways pointed out by McAtee is their existence made most precarious.

Not by any means on sentimental or esthetic grounds alone need we plead for the protection of shore birds. Many species eat mosquitoes, such as play so important a part in disease dissemination. Fifty-three per cent. of the food of birds from one locality was found to consist of mosquito larvæ; and among the insects thus eaten was the salt-marsh mosquito, for the elimination of which the State of New Jersey has expended much in money and energy.

Cattle and other valuable live stock also are greatly molested, not only by mosquitoes, but also by horse-flies. Adults and larvæ of the latter have been found in the stomachs of several species of birds. The killdeer and the upland plover, moreover, devour the North American fever tick, so injurious to cattle. Crane-fly larvæ are frequently most destructive in grasslands and wheat fields; among their many enemies shore birds rank high. These birds, again, are very fond of grasshoppers, which, as all know, are most destructive of corn, cotton, and other crops. Again, twenty-three species of shore birds were found to have fed on Rocky Mountain locusts (great grain consumers) in Nebraska.

Some of our severest economic losses are occasioned by insect pests of forage and grain crops; these pests are a natural food of shore birds. The army worm, cut worm, cotton worm, tobacco worm, and potato worm are meat for the avocet, woodcock, pectoral and Baird sandpipers, upland plover and killdeer. The principal farm crops have many beetle enemies; birds thrive on these beetles: the boll weevil for the upland plover; crayfish, the upland plover and the killdeer; the rice weevil for the killdeer; the cowpea weevil for the upland plover.

GAME PROTECTION

Crayfish are a pest in southern rice and corn fields and they injure levees; they are a favorite food for the black-necked stilt, jack-snipe, robin snipe, spotted sandpiper, upland plover, and killdeer. In Texas the upland plover follows the plow and eats grubs destructive to garden stuff, corn and cotton crops.

It would be well indeed for all the governments of the States in which these birds have their habitat to legislate for their protection. Massachusetts, Vermont, and Louisiana have established a continuous close season for some of these species until 1915; much more than this, however, is essential to be done.

There is another view of the question of protecting wild life which we presume has occurred to all thoughtful persons at some time during their lives. It regards the question of the rights of the lower animals in the omniscient plans of Nature. From childhood the author has always been fond of contemplating Nature's works at first hand and admiring them. It has been his custom for years to seek some ancient solitude in the wilderness whenever occasion offered the opportunity; to sit down in a convenient spot therein, listen to the harmonious and engrossing melody of the birds, note the wonderful activities of the wild creatures around him and soon fall into a reflective frame of mind. Then those unsolvable questions invariably arise in the mind after this fashion: Why is all this so?

WHY PROTECT THE GAME ?

What does this or that peculiar thing mean in the cosmic whole? Have not these wild creatures some rights of equal importance in the contemplation of their Creator with those of our own?

We note how wonderfully well ordered everything is in Nature, and ponder over man's natural bent to disarrange and destroy these things. Then we reflect further on this line, and soon find that we have drifted so far into the deep water of mysteries that the task of solving all things becomes impossible with our finite perceptions and we abandon the task and dismiss it. So the author once sat on a big log in the woods and wrote a few lines on the question of the "rights of animals in natural law." These were afterwards published in a sportsmen's magazine, and we give the following extract from that article; not, perhaps, that it is of any particular value, but simply to excite the reader's own reflections on the question :

It is to be regretted that Blackstone, or some equally competent authority, has not written a treatise on the Rights of Animals in their relation to man, for surely in natural law animals have some rights.

Present-day philosophers dispute the old saying that the fowls of the air, the fishes of the sea, and the beasts

GAME PROTECTION

of the forest were created for the benefit of man; and well they may for is not man absurdly conceited to think that God created the world for his sole benefit? This old doctrine is manifestly repugnant to science and to reason. Being endowed with superior intelligence, man has been able to secure mastery over all the lower forms of animal life, but it does not follow that this mastery gives him unrestrained license to destroy all the other animals at his pleasure. On the contrary, it presupposes that his intelligence should teach him to be reasonable and to confine himself to his needs.

Nature has ordained things in such an orderly fashion that each particle of animal, vegetable, and mineral life has its place. Man is only one small atom of animal life in the grand whole. Then, by what right does he arrogate to himself the privilege of possessing all else? It is plain that man has the natural right of preying on the other species of animal, vegetable, and mineral life for sustenance, and he seems so to consider the matter in relation to everything except the other animals. But have not the other animals this same right? This thought leads to the direct question which I wish to discuss, and which I may put this way:

Have not the lower animals some rights *per se*, of equal importance in natural law with those possessed by man?

In other words, has man any right in natural law to destroy the lower animals for the mere pleasure of slaughter?

By what process of reasoning can we conclude that he does possess such a right?

By observing the lower animals, wherein do we find any of them setting us such an example?

We observe that the carnivorous animals have teeth, evidently designed to masticate flesh, and it appears natural for them to live by preying on other animals; but do

WHY PROTECT THE GAME?

any of them destroy life for the fun of it? It appears at first thought that they do. For instance, we note that the weasel kills in numbers, and, personally, I have known lynx to enter a farmer's hen-house and kill 53 pullets in one night.

But are we certain these slaughters were made for the gratification of blood lust? Closer observation would seem to show that certain animals, when hard pressed by hunger, kill in numbers to satisfy an instinct "to lay by something for a rainy day," just as the squirrel, in time of plenty, stores up nuts for the winter; or as the beaver lays in a store of young shoots for the time when ice covers the waters and he can no longer gather his food daily.

How may we know the lower animal mind anyway, except by long and careful observation? How may we arrive at facts from a superficial observation of them all as a class?

Again, were the forests created for the sole pleasure and profit of mankind? They form almost the chief shelter and the source of food for our wild life. It is doubtless true that man has the right to appropriate his share of the same to satisfy his needs, but wherein does one individual get the right to destroy a whole forest, merely to gratify his desire for wealth? In doing so, he also destroys the wild life contained therein, or drives it away, and thus deprives other men of their share.

Note the difference between man's attitude toward the forests and the wild life. He uses his energy and industry in destroying the forest in haste, for present personal profit, taking no thought of the future, but he never does this for mere pleasure or recreation. On the other hand, he often exerts himself to his utmost to destroy wild life without a thought of profit, merely to gratify his passion to kill.

I admit that man is entitled to partake freely of the

GAME PROTECTION

supplies of Nature, for that is what they are here for; but beyond satisfying his real needs, it is repugnant to reason to assert that he has a right to partake of these stores to gratify his passions. This would inevitably lead to the conclusion that one generation has the right to exterminate living creatures and deprive future man of his share of them.

The supply of wild life was handed down to us as a priceless heritage of Nature, to be used economically to supply our needs, and then to be passed on to our descendants. While we inherited a treasure, it was accompanied with a great responsibility. If natural law was strictly observed the balance in Nature would always remain even. Upsetting this balance has led to the present need for conservation of our natural resources; to the enactment of game laws; to the predictions of prophets of future trouble, and to the necessity of immediate action to control men's rapacity and careless tendencies.

Among the Indians and pioneers of this country there was no necessity for such measures, for our natural resources were used by them only to supply their needs, and there was an abundance for all. In those days there was little thought of hunting for pleasure or lumbering for profit. It was all a matter of necessity. Increasing population and advancing civilization have changed all this and our natural resources have assumed a different aspect in the eyes of men. Game is now needed only in isolated communities as an article of food. In view of this, must we now hold that it is our duty to cease absolutely from hunting and killing the wild life around us? Few rational men take such a view of present day conditions. We argue, rather, that we should kill more sparingly, and never, under any circumstances, for mere pleasure or profit. The killing should be only a necessary incident to our enjoying the game as a food and the

WHY PROTECT THE GAME?

pursuit of same should profit us in many ways: quicken our wits, afford us physical exercise, bring us closer to Nature, and serve as a relaxation from our daily grind of toil in gaining a livelihood. Civilization and its attendant incidents have become so complex that there is a continual struggle among men to procure the necessities of life. The need of an annual vacation, when the powers of life may be given an opportunity to recuperate, has become mandatory. In taking these vacations men find it to their advantage to seek the solitudes of the forests and get closer to Nature. As they are thus brought into contact with the wild life of the wilderness, the primeval instincts of their forefathers, which were originally occasioned by necessity, are aroused. The natural tendency is, of course, to give way to these slumbering instincts, and the hunt begins. The learned man of the city often seems to leave his reasoning faculties behind him and slaughters without thought, care, or purpose. His human attributes, so finely displayed in his walled-in city life, seem to give way momentarily to his baser passions and he makes no effort to control them. On the contrary, he thinks this is restful to his mind.

CHAPTER III.

RELATIONS OF BIRDS AND MAMMALS TO THE NATIONAL RESOURCES

PUTTING aside for the moment all question of sentiment whatsoever, the inquiry—" *Why protect the game?*"—is ably, completely, and convincingly answered by Dr. C. Hart Merriam, Chief of the Biological Survey, United States Department of Agriculture, in his report to the National Conservation Commission of 1907. Dr. Merriam says:

In taking stock of our national resources and considering ways and means for their conservation, it should not be overlooked that an important part of the national assets consists of our insectivorous and game birds, our splendid game animals, and our native fur bearers.

VALUE OF BIRDS ON THE FARM

Birds at all times and in all places are of direct interest to man. Some prey upon the products of man's husbandry, but by far the greater number prey continuously upon insects and rodents—the ever present enemies of agriculture and forestry. While it is impossible to represent by figures the value of our insectivorous and predatory birds, or to present in the form of statistical tables the number of millions saved annually by their labors,

BIRDS AND MAMMALS

it would be a short-sighted policy indeed that would sanction depletion of their ranks. It is safe to say that upon their presence and well-being depend the existence of our forests and the possibility of successful agriculture. In most States an enlightened policy with regard to insectivorous birds already prevails; and there is a growing sentiment also in favor of adequately protecting game birds, not only for their food value and as objects of pursuit by sportsmen, but for their demonstrated value as destroyers of insects, in which capacity some of them take first rank. The recognition of their importance in the latter rôle is comparatively recent, and much remains to be done before the public is educated to an understanding of the nature and full extent of their services, and the losses that will inevitably follow serious diminution of their numbers.

A striking illustration of the value of certain of our native birds and mammals in an emergency was afforded during the invasion by field mice of the alfalfa districts of Nevada in 1907, when mice in the Humboldt Valley increased till in places they reached the astonishing total of 12,000 to the acre, and completely destroyed the alfalfa fields. Several species of hawks and owls, many ravens, gulls, and herons, and numerous foxes, skunks, and coyotes speedily assembled and took up permanent residence in the infected district, where they fed almost wholly on the field mice. Though inadequate by themselves to suppress the plague, they contributed important aid, and had not their numbers been previously reduced by years of persistent persecution, it is almost certain that no plague would have occurred, as they would have prevented the increase of the mice. Furthermore, after the mice had been greatly reduced in numbers by systematic and persistent poisoning (in February, March, and April), they continued to decrease under the continuous attacks of their natural enemies until by August they were actually scarce—

GAME PROTECTION

indicating the efficiency and value of the service rendered by predatory birds and mammals.

So important are birds as conservators of the forest and as protectors of farm crops that neither forestry nor agriculture could be successfully practised without their aid. As year by year the value of farm and orchard products increases, so the value of birds as conservators of the farmers' interests increases. The need of adequate legislation in favor of insectivorous birds was never so great as now, and it is probable that in the future protective laws will be still more important. Insectivorous birds spend their lives in the pursuit of insects, vast numbers of which are required for their support. The seed-eating birds attack noxious weeds at the most critical stage of their existence, during and after seeding, and as seeds constitute for these birds the staff of life the quantity they destroy is incalculable. No labor-saving machine has ever been devised that equals the value to the farmer of the seed-eating birds. The predatory birds, mainly hawks and owls, render an even greater service, keeping down the hordes of mice, gophers, ground squirrels, and other vermin that destroy crops. It is not too much to say that such outbreaks as the recent field-mouse plague in Nevada would never occur were it not that our predatory animals have been so greatly reduced by ruthless killing that they are no longer able to prevent the increase of these pests.

VALUE OF INSECTIVOROUS AND THE SMALLER PREDATORY MAMMALS

The value of our insectivorous mammals, and of those whose food consists largely of destructive rodents, is less generally understood, and the labor of protecting and preserving them for the benefit of future generations of farmers is rendered correspondingly difficult.

BIRDS AND MAMMALS

The lesson that every badger in Wyoming, Colorado, Texas, and other Western States has a distinct money value to the public, and that the wanton slaughter of one is a crime against good citizenship, is as yet unlearned by the majority of the population. Foxes, skunks, weasels, and in certain regions even coyotes, have their appointed places on the force of Nature's policemen, and a knowledge of the part they play and of the nature and extent of the good they do, as well as of the harm, should be universal.

VALUE OF WILD GAME

The number of wild deer killed annually in the United States is not known, but the annual kill in six of the Northeastern States (Maine, New Hampshire, Vermont, New York, Pennsylvania, and Michigan) is about 35,000. The resulting venison at 20 cents per pound is worth considerably more than a million dollars. To this should be added the value of hides, trophies, and other products of deer. Bear also are killed in these States, and have a material annual value. Besides, in Maine, about 300 moose are killed annually, the meat, hides, and trophies of which are worth at least \$25,000.

In the States west of the Mississippi Valley the game mammals comprise several kinds of deer, elk, moose, antelope, mountain sheep, mountain goat, and bear, and the annual kill is very large, but exact statistics as to numbers and values are lacking.

Game birds, including ducks and geese, snipe, plover, and other shore birds, and the various kinds of grouse and quail, are shot in great numbers in every State in the Union, and the aggregate have an enormous food and pecuniary value.

The annual revenue from hunting licenses is large and is steadily growing. In 1907 resident licenses were required in 21 States, non-resident in 43. From the rapidity

GAME PROTECTION

with which the license system is spreading, it is obvious that in a very few years it will be general and that the annual revenue from this source alone will exceed \$3,000,000—a sum considerably in excess of that required for the support of an ample warden service; so that the returns from the sale of licenses will be a source of direct revenue to the State.

The value of game may be direct or indirect. It may yield the State a direct revenue in the form of fees from hunting privileges and leases, and the owner a cash return from its sale for food, hides, trophies, and other products, or, if alive, for purposes of propagation; it may also directly increase the value of land. The principal indirect benefit is from the influx of non-residents—hunters, photographers, and summer visitors—attracted by its presence, with the resultant employment of guides, boatmen, and camp help, and coincident increase of local business.

VALUE OF FUR-BEARING ANIMALS

North America was formerly the richest fur-producing region in the world, but now the stock of fur-bearing animals is greatly depleted and the supply falls far short of the demand. Still, the annual export of raw furs from the United States is valued at from \$7,000,000 to \$8,000,000, and the furs retained for home manufacture reach an even higher figure, so that it is probably within bounds to say that the present value of the annual catch of furs in the United States is between \$15,000,000 and \$20,000,000. The growing scarcity of the more valuable fur bearers has produced in the lower grades a great increase in both demand and price. What is needed in the case of this group of mammals is wise husbanding of the wild stock, which everywhere is diminishing under the growing demand for furs and the rapid encroachment on their original domain by our ever-expanding civiliza-

BIRDS AND MAMMALS

tion. Under proper restrictions, the stock of fur-bearing animals, particularly in mountainous regions and in the national forests, may, without cost for maintenance, be brought to yield a large annual revenue.

It is fortunate that one of the most valuable of the fur bearers, the silver fox, can be reared in a semi-domesticated state, and it is believed that the industry of fox farming is likely to prove a permanent occupation in northern districts where the fur attains its best development.

Causes of Depletion.—The chief causes of depletion may be briefly summarized as: (1) killing without provision for maintaining the breeding stock; (2) killing during the breeding season, or, in the case of migratory birds, en route to the breeding grounds; (3) killing without limit.

CHAPTER IV

PRESENT MEANING OF THE TERM GAME PROTECTION

At the present day in the United States, the phrases "game protection" and "conservation of wild life" are synonymous terms and have a distinct and well-understood meaning, which, in effect, amounts to this: The enactment and enforcement of wholesome laws for the purpose of preserving all species of animals *feræ naturæ*—that is, all quadrupeds, birds, and fish of a wild nature—which are of benefit to mankind. And it is confidently believed that the researches of biologists have now definitely proved beyond controversy that all *feræ naturæ* are of value to man in one way or another.

The word "game" has been judicially defined in many cases coming before the courts of justice, and it is interesting to note how its meaning has been broadened and made more comprehensive from time to time, as new discoveries of science have proclaimed the necessity of including various species among the valuable animals and birds

MEANING OF TERM GAME PROTECTION

which were formerly considered obnoxious to man. In early times the term "game" was defined as referring only to birds and beasts of a wild nature obtained by hunting and fowling. Later on, the courts said game meant such birds and animals as were fit for food of man. Then they next admitted that the term might apply also to animals valuable for their fur or otherwise, and finally they were compelled by the forward movement for the preservation of wild life to interpret the term as including fish, even meaning oysters, clams, and other shell-fish.

Thus, we now fully understand what is meant by game in this country. But when we speak of "game protection" we should keep in mind that there are two distinct and entirely different systems of protection in vogue throughout the world. The one is that already referred to and may be styled the governmental system—or that system of compulsory restraints upon individuals, whereby the supreme power in the State or nation decrees that the game shall not be promiscuously slaughtered at will, but only under suitable regulations, to the end that it may be conserved in the interest of all the people in common. This is the only system we

GAME PROTECTION

recognize at the present time in this country. It is the only proper one for any country wherein the people are recognized as sovereign, and to-day thousands of our leading citizens are laboring unselfishly to make that system a complete success.

The other is the private or individual system of protection, by which interested persons employ the means at their command and within their knowledge to conserve and increase the game for their own private use and benefit, without any consideration whatever for the welfare of the general public in so doing. This latter scheme prevails largely in Great Britain and on the continent of Europe, and is referred to more particularly in a later chapter.

In the mean time it may be well to call attention to the fact that history shows that the former theory was anciently adopted in all European countries, but, by reason of indifference upon the part of the general public, it proved ineffectual in conserving the game, and the other system finally supplanted it. It appears that the people of those countries, like those of our own in recent times, took little interest in preserving their game. They considered all

MEANING OF TERM GAME PROTECTION

laws harsh and repressive to a degree, and bent their energies more in the direction of pursuing and destroying game than in protecting it, with the inevitable result that, when the scarcity became so appreciable as to excite alarm, the wealthy, aristocratic class took the matter in hand and began to propagate and protect the wild life systematically on their great landed estates for their own private recreation and enjoyment.

Now, as surely as morning follows the night, that same change of systems will occur in these United States unless more active interest is taken in our present governmental system by the people at large. We may see the forerunners now of this private system in every State in the Union. Immense tracts of wild land and shore marshes are being secured annually by our wealthy sportsmen, either individually or associated with others in clubs, for game preserves, and the public is awakening to the true significance of this movement, we hope. But it will not do to condemn these sportsmen, when we remain wholly indifferent to the cause back of this move. We should first prevent the cause and then the effect will not follow. As long

GAME PROTECTION

as there is a fair supply of game for all classes there will be no incentive for this individual system, but when the game covers and fishing pools become depleted and exhausted the incentive is very great.

We come now to the discussion and examination of our governmental system. The question is, Can that system be made a thorough-going success? In other words, Can a fair supply of game for all be preserved and maintained by means of wise laws, well enforced? With a single qualification, we answer most emphatically in the affirmative. The qualification consists in this: Concurrently with the enforcement of wise laws, we must put forth such a campaign of education as to bring the public sentiment over to the support of those laws. The public must be solidly back of the movement. The people must be taught to appreciate the real value of our wild life to themselves, individually and collectively, in order to arouse their self-interest, and then they must be given to understand that these laws were enacted for the public good and not in the interest of any special class. Thus enlightened, public sentiment will exercise its powerful influence in enforcing the laws.

MEANING OF TERM GAME PROTECTION

And this brings us to what has proved to be the fatal weakness in our governmental system in the past, *i.e.*, the lack of proper enforcement of the game laws. It ought not be necessary to call attention to a matter which should appeal to ordinary reason as an obvious fact, and common-sense should dictate that laws are of no value as such to accomplish anything without being enforced, yet, nevertheless, every experienced, practical game protectionist in America realizes that the whole difficulty in the past has been right at that point in our theory. Of what avail are statutes unless properly enforced? Annually we witness clubs and representatives of associations appearing before the various Legislatures in the interest of game legislation. These men work indefatigably for new laws and exert their utmost efforts in that behalf. Yet after such statutes are enacted how many individuals, clubs, or associations do we find exerting themselves in the least toward securing the enforcement of such laws? The truth is, too, that the enforcement of the laws is the prime necessity; it is a prerequisite to the success of any governmental system of game protection, without which all other efforts are foredoomed to utter failure.

GAME PROTECTION

It is idle, and begging the question, to say that the remnants of game we now have cannot be both preserved and increased by law, when the law has never had an opportunity to prove its value by proper enforcement. That such an assertion is not true has been repeatedly demonstrated in communities where wise laws exist and are well enforced. When we find that the game is becoming unusually scarce in a certain section, investigation almost invariably discloses that the laws are unwise or else they have not been enforced—generally the latter. And by enforcement we do not mean sporadic attempts, but vigorous, continuous, and consistent efforts to obtain their full benefits. Nothing is so conducive toward educating the public as rigid enforcement of the laws. When citizens who violate the statutes are brought to book for their offences, they are quite apt to give the matter some study and reflection, which, in the end, will convince them of the error of their ways.

There is no way of testing the efficacy of a law save by its rigid, continuous, and consistent enforcement. If proper enforcement proves it to be defective for its intended purpose, then it

MEANING OF TERM GAME PROTECTION

should be amended or repealed. Otherwise, there is no means of securing accurate information on the subject, and the spectacle of constantly changing game statutes at each recurring session of the Legislatures without a practical test of the same has been the one serious evil of our American system in the past. It appears to be the prevailing fashion when one State enacts an experimental game law for the other States to follow and do likewise, without any thought for the local situation. As a matter of fact, however, it often happens that what would be a wise and adequate measure in one State, to meet conditions which there prevail, may prove utterly foolish and disastrous in another section where the conditions are wholly different. This principle lies at the very foundation of the Anglo-Saxon theory of local self-government and should be applied to the enactment of game statutes as well as to other measures.

The sponsors of these experimental laws are usually mere theorists who have no practical knowledge of the effects of such measures and are unfamiliar with the conditions in their own communities. All this may be avoided by a careful examination of the results of strict en-

GAME PROTECTION

enforcement of statutes enacted to meet local conditions.

Of course, it is plain to all practical men why the enforcement of game laws has been so lax in the past. They were in the form of a novelty to most people and seemed to be contrary to the American spirit of personal liberty, and it was difficult to impress the majority as to the reason and necessity for such measures. Therefore, the work of enforcement was both onerous and disagreeable, especially in a community where public sentiment was adverse to such laws; but for all this it was and is a duty which some one must undertake unless we are ready to concede that our whole theory of game protection is a failure. Perverted public sentiment can be changed by education and lined up on the side of the laws. Education must be the handmaid of enforcement, however, and not assume to precede the latter, for in that event it may arrive too late—only when all of the game is exterminated.

When the Congress was recently discussing federal protection of migratory birds, there was, at least, one member of the House of Representatives who appeared to thoroughly understand the value of educating the public on this

MEANING OF TERM GAME PROTECTION

subject. We refer to Mr. Linthicum, of Maryland, when he said in his speech:

We should begin a campaign of education, teaching not only the pleasure to be had from a closer acquaintance with our bird friends, but also the benefits which farmers derive from their presence. To many it has never occurred that man is the only living creature who takes life for sport or pleasure; others take life, but when they do so, it is always for food or in self-defence—never for pleasure alone. . . . Legislation alone will never assure that complete protection toward which this measure is a step. Real protection will come through educating our people to the value of the birds, that they may realize the part played by them and the other inhabitants of our forests and fields and streams as economic factors in our everyday life. Unless backed by strong sentiment and effective public co-operation, legislation will accomplish little.

In this connection we call attention to another important factor. There will never be real game protection in America until the sportsmen—either individually by personal effort, or collectively by the united action of associations—assist, support, encourage, and co-operate with the regularly chosen game officers. Nearly every State in the Union now has a thoroughly worked out system of game laws upon its statute books. But are these laws enforced? If not, who is responsible? The answer must be—the sportsmen of that State. In almost every com-

GAME PROTECTION

munity there can be found a man who will accept the office of game warden and put his whole heart unselfishly into his onerous work; laboring honestly and diligently for the cause, facing the dangers and vexations of his most difficult task, and doing his whole duty by the law for game protection, whether he is properly compensated for such services or not—if only he can feel assured that he is backed, supported, and sustained by the community. Assuming that laws are meaningless without enforcement, assuredly they will be enforced by capable and honest men, if only such men have the moral support of their fellow-men. That support is to be expected as a matter of right from the sportsmen, for they are the chief beneficiaries of these measures. Also, the work of enforcement must be absolutely divorced from politics. Sportsmen belong to all political parties and they are united for this cause. Therefore, they must instantly represent unitedly any interference upon the part of party bosses, or the work will fail. No game officer can do his duty if compelled to discriminate in favor of persons with political influence. If tenure of office is dependent on political favor the office of game warden will be a misnomer.

MEANING OF TERM GAME PROTECTION

This influence can be eliminated by the process of civil service for all game officers.

To sum up, then, true game protection in America consists of wise and wholesome laws, with rigid enforcement of same, the aid of a strong public sentiment, and such incidental benefits as can be obtained from individual efforts by way of eliminating secondary causes of destruction, such as keeping down the production of certain species of vermin, promiscuous house-cats and mongrel hunting dogs, bad forestry methods, etc.

CHAPTER V

BRIEF SURVEY OF GAME LEGISLATION IN AMERICA

It is difficult to ascertain in what year the first game legislation was enacted by white men on this continent. It is known that the Indians or aborigines long had tribal laws in force regulating the killing of wild life before the white men arrived here, and so important did their wise chiefs consider such measures that in case of some offences—such as killing “sacred game”—the penalty was fixed at death.

Of the Anglo-Saxon settlers who established the original colonies in Virginia and Massachusetts, we find little on record which tends to prove that at the beginning as a people they considered game legislation necessary. The fact that many of them came to this country for the distinct purpose of escaping the penalties of the harsh game laws and odious forestry laws of the mother country leads to the belief that they despised such measures. In their new homes they found game of all kinds in abundance, and

GAME LEGISLATION IN AMERICA

suffice it to say they took immediate advantage of their opportunity and privileges and soon became a veritable race of hunters and expert marksmen. However, in Virginia the cavaliers seem to have soon established their English common-law rights of property in game found upon their large landed estates, and enforced these rights in some instances by force of arms.

The earliest authentic evidence of colonial legislation according to the modern notion of game laws was that of New Jersey in 1679, when the General Assembly of that province prohibited the export of any dressed deer skins from deer killed by Indians. From that time on, New Jersey continued steadily in the enactment of game laws of various kinds. In the Massachusetts Bay Colony an act to protect deer was passed in 1698, and in New York deer received the first attention of the law-makers in 1705. In 1769 South Carolina passed an act protecting deer by a regular close season from January first to July first, while in 1797 Vermont enacted a similar law. In 1774 Tennessee forbade night-hunting for deer. As showing the abundance of game in that State during the early days of its settlement, we have the record of a legislative

GAME PROTECTION

act of different character as a living witness. It seems that a portion of the present State of Tennessee had later established itself as an independent, separate State and was known by its natives as the State of Franklin. In 1788 the Legislature of the State of Franklin met.

At that time money was scarce with which to pay the officers of the new State, so in October of that year the Legislature of the State of Franklin enacted the following law to provide for the compensation of their officers:

Be it enacted by the General Assembly of the State of Franklin, and it is hereby enacted by the authority of the same, That, from the first day of January, A.D. 1789, the salaries of the civil officers of this Commonwealth be as follows, to wit:

His excellency, the governor, per annum, one thousand deer skins; his honor, the chief justice, five hundred, do. do.; the attorney-general, five hundred, do. do.; secretary to his excellency, the governor, five hundred raccoon, do.; the treasurer of the State, four hundred and fifty otter, do.; each county clerk, three hundred beaver, do.; clerk of the house of commons, two hundred raccoon, do.; members of assembly, per diem, three, do. do.; justice fee for signing a warrant, one muskrat, do.; to the constable for serving a warrant, one mink, do.

Enacted into law this 18th day of October, 1788, under the great seal of the State.

The above not only shows the abundance of game which inhabited that section of the country

GAME LEGISLATION IN AMERICA

at that time, but also what a race of hunters and trappers the settlers were; in fact, hunting, fishing, and trapping seem to have been the principal occupation of the people. Also, in the absence of proper measures to conserve the supply, we can readily understand how and whither the game has gone from the land.

During the entire colonial period, prior to the establishment of the United States as an independent nation, a great mass of game legislation was enacted in almost every colony, but a careful examination of these laws show that only a few of them were in the nature of strictly protective measures; that is, they were not so much in the nature of restrictions upon the rights of persons in killing the game as they were for the purpose of saving the wild life to local use and preventing its exportation out of the colony named.

After the adoption of the federal Constitution and the establishment of the national government, protective game laws were enacted regularly in many States. In 1817 Massachusetts passed an act to protect deer by a close season from January to July, and was followed by Virginia to the same effect in 1820, while in the

GAME PROTECTION

former State wild turkeys and game birds were protected the same year. In 1812 Vermont began to protect muskrats by legislation, and the same animals were similarly protected in Ohio in 1830 and in New Hampshire in 1843. From time to time the States appear to have wholly neglected legislation conserving their wild life, while at other periods they fairly vied with each other in the mass of game legislation enacted. In 1830 Maine began protecting moose and deer.

Except in New Jersey in 1846, few other game statutes were passed in the intervening time until 1850, when Ohio, Alabama, and California prescribed close seasons for deer, and in 1852 Delaware forbade killing deer at any time. In New Jersey in 1852, Rhode Island in 1857, Maryland in 1860, Kentucky in 1881, and Connecticut, Maine, Illinois, and Michigan in the seventies, laws were passed protecting wild fowl.

Besides the acts of Vermont, New Hampshire, and Ohio protecting muskrats earlier, fur-bearing animals received legal protection in Maine in 1866, Ohio in 1867, Nebraska in 1872, and Montana in 1885.

Statutes protecting rabbits by close season were passed in Ohio in 1857, Connecticut in

GAME LEGISLATION IN AMERICA

1865, Rhode Island in 1872, New Jersey in 1873, and Kentucky in 1876. Of these States the three former also forbade the use of ferrets in taking rabbits at that time.

The first bag-limit law was probably enacted in Iowa in 1878 and limited the number of game birds to 25 in one day, while in 1891 New Hampshire permitted only one moose, deer, or caribou to be taken in one open season. While Maine took up this idea in the eighties, yet the fact seems to be that this kind of a law was the invention of later-day game protectionists. At present, however, a large majority of the States have such statutes in force.

Maine was undoubtedly the first State to see the wisdom of establishing a separate department for and providing special officers to enforce the game laws. In 1843 that State provided for the appointment of "three fish wardens," who were charged with enforcing the statutes for the protection of fish. In 1852, nine years after adopting the fish warden system, and 22 years after the passage of laws to protect moose and deer, the Legislature of Maine made provision for the appointment of "moose wardens," in special counties to enforce the laws

GAME PROTECTION

respecting big game, and the following year (1853) this system was extended throughout the State.

In 1858 this example of Maine was followed in New Hampshire by providing for fish wardens in the several towns of the State, while in 1865 both New Hampshire and Massachusetts established separate departments of State known as fish commissions. In 1867 this plan was adopted in Connecticut and Vermont, and in New York in 1868, while in 1871 the latter State adopted the Maine plan of placing the protection of game into the hands of special officers known as "game constables." In 1887 Minnesota established the office of "State game warden," and in 1888 New York that of "chief game protector." Maryland provided a "board of ducking police" in 1872 to protect wild fowl.

In spite of all this rather desultory legislation, the era of real game protection in the United States probably dates from the opening of the twentieth century. In May, 1900, the first comprehensive federal government enactment for the protection of game went into effect. This was the so-called Lacey Act, and thereafter at the city of Washington was established a special

GAME LEGISLATION IN AMERICA

bureau to aid the States in this work, and the accomplishments of that bureau have been, indeed, remarkable. This bureau soon put the States into a strictly business attitude regarding their game, and gave the work a dignity it did not before possess. By means of bulletins, personal interviews, and addresses, the able men connected with the Biological Survey carried on such a wholesale campaign of education as to immediately awaken the States and nation to their duty regarding the valuable assets they possessed in their game supply.

Summing up the situation throughout the country in five years after the passage of the Lacey Act, Dr. T. S. Palmer, assistant in charge of game protection in the Biological Survey, Department of Agriculture, says :

From colonial days the States had made repeated efforts to protect their game, and some of them had developed their laws to a comparatively high degree of complexity. Disputed points had been carried to the highest courts and in a few cases to the Supreme Court of the United States. The federal government, on the other hand, had done comparatively little. In 1832 Congress passed an act regulating the destruction of game in the Indian country; in 1878 a game law for the District of Columbia; in 1894 one for the Yellowstone National Park; and in 1899 a new law for the District of Columbia, and one providing against the wanton destruction of fish and game in the Mount Rainier National

GAME PROTECTION

Park. It also incorporated a few provisions in the tariff act affecting the importation of birds and mammals, and inserted in the criminal code of Alaska a section prohibiting the destruction or export of eggs of cranes and water-fowl. It had done nothing, however, to prevent the introduction of noxious animals and birds from abroad, had never exercised its functions in regulating interstate commerce in game, and had made no general provision for protecting game in national parks or reservations.

A decision rendered by the Supreme Court in 1896 in the case of *Geer v. Connecticut* held that game was the property of the State; that it could be protected in such manner as prescribed by the Legislature, and that its export to other States could be prohibited without conflict with the interstate commerce clause of the Constitution. This decision gave a new impetus to game legislation throughout the country and encouraged the States to incorporate non-export provisions in their laws.

CHAPTER VI

"SANE, SIMPLE, AND SCIENTIFIC GAME LAWS"

"FROM the earliest traditions the right to reduce animals *feræ naturæ* to possession has been subject to the control of the law-giving power," says a very distinguished authority. Ancient Greece and Rome and modern France, Germany, and England all had their codes of game laws from time immemorial. In another chapter we give a brief résumé of game legislation in the United States. The singular feature of such legislation in this country is that less than three decades ago a well-considered code or system of game laws was quite a novelty and comparatively unknown here. Less than a quarter of a century since such measures were in the experimental stage, and, judging by the numerous changes still being made in the laws at each annual session of the State Legislatures, it appears that that stage has not yet wholly passed.

These present changes are mostly the result of recommendations by new State game commissions and newly organized clubs and sportsmen's associations. Each new commissioner

GAME PROTECTION

and club has new and varying ideas on this subject which he seeks to incorporate into laws at the first opportunity. Dr. Palmer, of the Biological Survey, estimated that from the enactment by Congress of the Lacey Act in 1900, when the statistics were first prepared, to 1907, nearly 700 game laws had been passed by the State Legislatures. Since the famous decision of the United States Supreme Court in the case of *Geer v. Connecticut* in 1896 to the present time, the author finds that over 1400 different statutes of this character have been enacted throughout the country.

Where will it all end? As Dr. Palmer remarked in 1907, so we may well repeat now: "It is thus evident that the chief need of game protection at the present time is not so much an increase in the number of laws as more effective enforcement of those already enacted." And he might have added that should all additional legislation now cease for a period of years, and during the intervening time the efforts of game commissions be devoted exclusively to the enforcement of the laws now existing, this country would experience real game protection for the first time in its history.

GAME LAWS

However, if we investigate the subject a little closer, it is easy to discern the underlying causes for most of these changes. Prior to the decision in the Geer case the States were in some doubt as to the extent of their power over game. That decision laid the leading questions at rest. Immediately following it a large mass of game litigation came into the highest State courts and many other incidental questions were settled. As a result there was a rush upon all of the State Legislatures to carry these decided principles into effect. The decision of the Supreme Court of the United States practically pointed the way for the States to follow, and gave them a free hand so far as certain legal barriers were concerned. But previous to the enactment of such proper legislation, the next important element to be considered in each State was a determination of the local facts and conditions which there prevailed, and the application thereto of scientific truths. Many of the States, however, took up their task hastily, without due consideration of this feature, with the inevitable consequence that changes were necessary, and they were compelled later to retrace their steps and go over the ground again and again, and it

GAME PROTECTION

seems clear that many of the changes being made in the laws at the present time are directly attributable to this fact. Of course, it must be conceded that owing to certain physical changes which are constantly taking place, such as advancing civilization, the clearing and reclaiming of wild waste land, destruction of the forests, the enormous increase in the number of persons who hunt and fish, and modern improvements in firearms and other weapons for destroying wild life, it becomes essential and imperative to revise the laws to meet these varying conditions. Doubtless, too, this process of change will continue for an indefinite time in the future, making the problem of preservation of wild life more difficult and complex. On the whole, however, it is apparent that in the past these matters were not properly investigated, considered, and pondered over before action was taken, for if they had been the game would not have been slaughtered so rapidly as to make the then existing laws utterly futile in coping with such conditions. On the other hand, it is gratifying to note that to-day these problems are receiving the careful and patient attention of bodies of able, distinguished, and unselfish citizens in all parts of

GAME LAWS

the country, which augurs well for the future and inclines us to be optimistic.

Now, it must at once be realized that in securing the enactment of proper laws there are many obstacles to be overcome. The average citizen is quick to find a fruitful source of criticism in the existing laws of his own State. This individual can readily pick flaws in any measure, and will usually inform you what would be the proper remedy for these imperfections. In fact, he often has a body of ideal game laws already framed in his own imagination which he believes would remedy all existing defects and evils and ultimately save the game from extermination. To the author's mind, this tends to show that the great body of sportsmen of America are at last doing some serious thinking upon this subject and is calculated to produce wholesome results in the future. But right at this point it may be well to call attention to one serious handicap that frequently arises in securing proper laws. We once heard a prominent legislator put it this way: "The difficulty is," said he, "we can never get the advocates of good game laws to agree among themselves as to what really constitutes a good game law. It seems to

GAME PROTECTION

be a local question every time. What one section of the State wants, the other opposes. And if they cannot agree among themselves, how can they expect us who are unfamiliar with the subject to know what measure to endorse and support?" While we are inclined to think our friend exaggerated the difficulty, yet it is certain that he uttered a very significant warning to all those interested in the cause of conservation of the wild life. Why is it that many sportsmen do not agree upon certain measures? In our judgment, the answer to this inquiry is plain, indeed. It all results from the fact that so many sportsmen fail to remember the fundamental principles involved in any wholesome game law. Concededly, game laws are enacted for the primary purpose of preserving the balance of supply of game, so that the watch-word should ever be, "Protection that will certainly insure preservation"; the pole-star question for guidance being: "Will this law result in preservation, or will its tendency be toward extermination?" And when considering the question in this proper light we should utterly forget and submerge all selfish interests in the subject; that is, whether we shall be permitted to take less game and our present

GAME LAWS

pleasures curtailed should have no bearing on the question, and everything of that sort should be sacrificed to the cause of preservation. There is not an interested person anywhere but what can easily discern the difference between a measure which will tend to save the game and one which will inevitably lead to its extermination, so why should there be any difference of opinion among true and unselfish sportsmen on this question?

Now, as we have repeatedly affirmed throughout this volume, real game protection consists in the enforcement of sane, simple, and scientific laws for that purpose. By sane laws, we mean those just and reasonably salutary regulations which appeal to our common-sense; which are based upon actual knowledge of present conditions; go to the seat of the evil to be remedied, and are usually advocated by practical, unselfish sportsmen and game officers who are familiar with the field-work of enforcing regulations of this character. No lawyer, however great his talents, can draft good field-working game laws unless he is familiar with the practical effect and operation of such measures. But this result can be readily obtained by combining the efforts

GAME PROTECTION

of a capable practitioner at law with those of unselfish sportsmen who are familiar with the conditions to be remedied, and the application to same of well-known scientific truths. Also, a sane law should not contain too many technical restrictions, nor be loaded down with such foolish requirements as to cause the average man to revolt against it, for if this is true (as it is true of many game statutes in this country) many sportsmen will consider it ridiculous and be prone to disregard its provisions altogether.

By simple laws are meant those which are framed in plain, brief, and concise language, without too much of the usual legal verbiage we generally find encumbering our statute books, so that all sportsmen may thoroughly understand them and courts of law have no difficulty in construing them when being enforced. The importance of simple laws can be readily appreciated when we consider that upon one occasion the author found a certain statute of Massachusetts so complex and mystifying that no two sportsmen, game commissioners, or courts could agree as to its intent and meaning, and its enforcement went utterly by the board for that very reason. He also found the same to be true in

GAME LAWS

two instances in Vermont, New York, and New Hampshire.

By scientific laws we refer to those founded solely upon the authority of scientific knowledge of the ways, habits, habitat, and breeding seasons of the game which it is desired to protect. For instance, in drafting a law to protect a certain species of fish, bird, or quadruped we should first inquire: When is its pairing or mating season? Next, What is the length of the period of incubation or gestation? Then, How long do the young of this species live by the aid of the parent fish or animal? This being all properly determined, we must then insist upon an absolute close season for such game during this time and not permit it to be molested or disturbed under any circumstances.

The next consideration is to arrange the open season with regard to the means used in taking the game, and the bag-limit per day and season to each sportsman, so that, as near as we can estimate, only the normal increase will be taken from the waters or covers each year. As Mr. John B. Burnham, formerly chief game protector of New York, well puts it: "The ideal game law," says he, "is one so arranged as to

GAME PROTECTION

season and method of hunting that no more than the increase of any game variety is killed during the open season, so that a sufficient breeding stock is left over each year to maintain the supply. When this balance is seriously impaired, the extinction of the game is only a matter of time." And he might have added by way of admonition, that it ought to be apparent to any reasonable person when he sees the supply growing shorter from year to year that this extinction of the species is in process of accomplishment and it is time to stop the slaughter.

Now, any law not founded upon the above ideal, scientific, and reasonable principles, is not a protective measure and should not be permitted to parade upon the statute books as a game law. Yet there are practically hundreds of such laws in existence to-day, because there are persons, selfish, indifferent or wanton, who are always desirous of loosening the lines and letting down the bars by longer open seasons, larger bags, and less restrictions and other subterfuges when the game cannot possibly withstand such advances, and whose voices are heard in legislative councils and their representatives are prone to assist them in accomplishing this object,

GAME LAWS

thus wholly forgetting the vital principles involved in such measures. This is where the real advocates of game protection, who are able to arise above sordid motives, are required to be constantly on the alert to forestall such efforts. Nothing can accomplish this safety check so effectually as well-organized bodies of unselfish persons who have regular legislative committees and counsel to keep them in touch with each measure as it is presented for the consideration of the law-makers.

In substance, then, "sane, simple, and scientific game laws," which is a term invented by the author, consist of as few statutes as possible; brief in language and simple in terms, supported by scientific facts regarding the habits and breeding of various species of game; and devoted principally to fundamental regulations respecting the time during which hunting or fishing is permitted, the manner of taking and the means employed, and the amount of game allowed to each person by the day's hunt or season's adventures; with definite ancillary measures providing for taxation of hunters and fishermen to support a game department independently of any State appropriation from other funds. Where we now

GAME PROTECTION

find many pages of a statute book required for this purpose, only a few should be necessary to embrace all these provisions of the game laws. Condensation can be brought about in this manner: one or two sections for general provisions covering the manner, means, and methods employed in taking any kind of game; a section relative to the right of transportation and traffic in game; a few sections only covering the open or close seasons for all species of game, with bag-limit permitted for each species incorporated in same sections; a few sections relating to license, and the same number regarding a game department and enforcement of laws.

Additional legislation after this code is provided should comprise measures carrying out the great auxiliary purpose of systematic propagation by means of State owned reserves or game refuges, whereon the wild life is protected at all times, and the establishment of breeding farms and fish cultural stations.

In revising and codifying game laws, then, if we keep these and the settled rules of law in view, ascertain the true local conditions and consult scientific specialists who are always happy to be of assistance in such matters, there should be

GAME LAWS

little difficulty in drafting a body of sane, simple and scientific laws which will meet the needs of real game protection and receive the hearty approval of all interested and unselfish sportsmen. After all, however, experience has proved that the vital and all-important admonition of the present age in America is this: Stop tinkering with your game laws, and ENFORCE THEM.

We cannot close this chapter in more appropriate words than those of Mr. Walter A. Swan, of Rochester, N. Y., in a recent article in *Case and Comment Magazine*, when he gave the following warning, which has been the author's creed for a number of years. "The need to-day," says Mr. Swan, "is not more legislation, but greater strictness, shorter seasons, smaller bags, and the setting aside of great tracts of land and forest not as parks, but reserved as to game with no open season."

CHAPTER VII

FEDERAL PROTECTION OF MIGRATORY BIRDS

THE question of protecting wild fowl and other migratory birds by means of direct national legislation has recently come prominently before the country. Several years previous to this time, advocates of such measures appeared before Congress and requested the enactment of legislation to that effect, but they were not accorded a very extensive hearing upon the subject. They were pointedly informed that no warrant for such an act by Congress could be found in the Federal Constitution. This appeared to quiet the discussion for a time, but later agitation brought forward another body of protectionists who were more persistent and determined. The latter also found friends in both houses of Congress to aid their cause, and started a propaganda which never halted until it had attained national proportions. The subject was thus given a new lease of life, and the contest for national laws was soon on in earnest.

It was the claim of these advocates—and the

PROTECTION OF MIGRATORY BIRDS

facts they cited in support of their contention could not be controverted—that the slaughter of these birds had gone on and on until the ultimate extermination of several species was plainly in sight. A number of States, they said, had refused to act at all in the premises, while others had such conflicting provisions in their laws that the only way to secure uniform protection and make progress toward saving the birds was through national legislation. The opponents of this idea admitted that many of the facts and conditions described were true; but replied that, while they were in favor of saving the birds, any such legislation was so palpably revolutionary and unconstitutional in character that they could not sanction it. Besides, the latter said, the difficulty was that in the States where most of the past slaughter occurred ample local laws were in existence, and the work of extermination was due almost wholly to the fact that the statutes had not been enforced, because contrary to public sentiment, and, therefore, if the federal government would make its own law really effective in those communities by proper enforcement, it would require a veritable army of federal officers—all strangers to the territory where they oper-

GAME PROTECTION

ated and consequently immune to local sentiment—to be kept constantly employed in enforcing the law. This, these opponents asserted, would entail an enormous expenditure upon the part of the national government, and would cause open and continuous conflicts between the State and federal officers—thus injuring the cause of protection rather than furthering it. Nevertheless, the advocates were not daunted by the slight opposition offered and pressed forward their cause.

During the session of the Sixty-first Congress, bills providing for federal protection of birds in different forms were introduced in the House of Representatives, but did not receive much attention from the national law-makers. Following this session the agitation throughout the country was renewed with such vigor and system that the question was soon brought to an issue.

At the regular session of the Sixty-second Congress, the matter was taken up for a trial of strength between the parties. In the Senate Senator McLean, of Connecticut, first introduced a joint resolution providing for the submission to the States of an amendment to the national Constitution giving Congress explicit power to

PROTECTION OF MIGRATORY BIRDS

protect migratory birds. After further consideration, the same Senator introduced a bill which provided that the Federal government should immediately assume control over wild fowl and other migratory birds. Later on, Senator Root, of New York, introduced in the same body a Senate resolution calling upon the President of the United States to negotiate treaties with the other nations of the Western Hemisphere for the purpose of protecting these birds. In the House of Representatives bills similar to the one introduced in the Senate by Mr. McLean were brought forward by Congressmen Weeks of Massachusetts and Anthony of Kansas.

Extensive hearings on these measures were held by the Senate and House committees having them in charge, and large delegations of game protectionists invaded the national capitol and urged their passage. Indeed, it was estimated during these hearings that parties representing forty-four of the forty-eight States of the Union had been heard from in favor of this legislation. The demand seemed to be nation-wide, urgent, and insistent. Petitions were received from numerous game clubs and societies, conservation assemblies, and eleven State Legislatures—all

GAME PROTECTION

favoring the passage of suitable national legislation at once; while, on the other hand, scarcely any one seemed to have the boldness and hardihood to oppose these measures openly. Some of the ablest men in Congress were utterly silenced by these extraordinary demands, although it appeared perfectly apparent to them that Congress could find no warrant under the Constitution to enact such legislation on a subject over which the several States had exercised complete control since the organization of our federal government. They fully recognized the demand of disinterested bird lovers throughout the country and were in full sympathy with the object sought to be attained, yet they felt they would be disregarding their oath of office to support this class of legislation.

While the matter was thus drifting for want of an early solution, Senator McLean's bill came up for passage in the Senate and passed that body on a *viva voce* vote without a single dissenting voice. The Senate afterward attached this bill of Senator McLean's to the regular Appropriation Bill for the Department of Agriculture, and it went before the House in this shape, where it was passed without very much serious opposition,

PROTECTION OF MIGRATORY BIRDS

except the speeches in that body of four members,—viz., Mr. Mondell of Wyoming, Mr. Cox of Indiana, Mr. Bartlett of Georgia, and Mr. Sisson of Mississippi. Mr. Mondell said:

Mr. Speaker, this is, in my opinion, the most revolutionary, the most far-reaching legislation, in its possible and probable effect on our system of government, that has been presented to Congress in the 16 years during which I have been a member of this body. If this bill should become a law, no man who voted for it would ever be justified in raising his voice, he could not logically raise his voice, against any extension, no matter how extreme, of the police authority and control of the federal government. . . . No legislation so profoundly subversive of the fundamental principles of our government has been suggested since the beginning of my service here, and I doubt if it has been in the history of Congress. We do not invoke the strong arm of the federal government for the protection of human life or property, no matter how much the States may temporarily fail in giving protection. We decline to invoke the strong arm of the Federal government for the protection of the honesty of elections; but pass this bill and every barrier standing against the assertion of Federal police control in every line and with regard to every act and activity of the American people is broken down, and we no longer have a government of self-governing States, but are well on the way to an empire governed from this capital.

Mr. Sisson pointed out what seemed to him a very important matter in the bill in this way:

When we get properly in our minds the property rights involved (in this bill), every man in the House who has

GAME PROTECTION

ever studied law for one minute will realize that the Federal government has absolutely no jurisdiction in this matter. . . . In the beginning of this government all of the wild animals belonged to the colonies by the common law, and that is a part of the law of this land, and the property in all of these animals and all of the birds is now in the people of the States. This bill in express terms endeavors to deprive the people of the States of their property in these birds.

Mr. Bartlett said:

Mr. Speaker, I protest against this innovation of the Constitution and the rights of the peoples in the States and all the people thereof.

Mr. Cox gave this warning:

Let no man be deceived when he votes for this bill; let him understand that he is voting for the most far-reaching measure that in my judgment was ever offered to the Congress of the United States. Let him who believes to-day that there is one particle of power reserved to the States under the Constitution, when he votes for this bill, ever afterwards be estopped from standing on the floor of this House and complaining in behalf of the doctrine of State rights. . . . This bill is unwise and iniquitous and never should be passed, for the reason that it delegates all power to the executive arm of the Government, that it is unconstitutional, that it usurps the powers of the States reserved by them under the Constitution, and that it is an interference by the Federal government with the police powers belonging to the States.

Unquestionably the ablest speech in support of the bill was that delivered by Senator McLean

PROTECTION OF MIGRATORY BIRDS

in the Senate. He went into the question quite extensively, and cited the authority of numerous ornithologists and other scientists as to the value of these birds to man and the necessity of immediate governmental action to save them from becoming extinct. On the constitutional question he rested the power of Congress to act on the theory that the question was an international one, over which the States severally, or the nation alone, could not hope to cope successfully in full and proper measure. It would require, the Senator said, the united action of the nations occupying the territory inhabited by these birds to secure real, permanent results. And reasoning from these logical premises, the Senator contended that this gave Congress power under the Constitution to act in advance of any treaty with the other nations and enact a national bird law. In this view many of his associates would not agree with the Senator. In his speech the Senator said:

It is worth while to note, at the beginning of our consideration of the powers of Congress over this matter, that the nations of Europe, as far back as 1873, faced a situation not unlike that which the countries of the Western Hemisphere are now facing. In 1873 the Congress of Agriculturists and Foresters moved "That the Imperial Austrian Government be requested to secure the

GAME PROTECTION

protection of birds by means of treaties with other states of Europe." In 1875 Germany, Austria, and Italy entered into a joint declaration for the protection of birds. Since that time four international ornithological congresses have been held at different periods in London, Paris, Budapest, and Vienna, and finally, in 1906, eleven European powers ratified an international agreement consisting of 11 articles which formed a comprehensive code for the protection of birds.

I take it for granted, that, should Great Britain and Mexico invite the United States to enter into a treaty agreement for the protection of migratory birds inhabiting at stated periods all three nations, the United States would have the right to accept this invitation. . . .

Mr. President, when we give this question the consideration it deserves, we must see at once that it presents a problem far beyond that of State pride or State sovereignty. . . . It is not a State question—it is not a national question; it is a continental question. It does not involve the right of either State or nation to destroy bird life. It is not the right to kill the robin; it is the right every State and nation has to enjoy its just share of the blessings of Providence—its natural resources. It is the duty of the United States to lead the way now,—*i.e.*, go as far as it can and start now, as it was the duty of Austria to lead the way for the European nations forty years ago. Future generations will never forgive us if we delay this matter longer, and we will not deserve forgiveness if we delay longer.

And in all of the above we most heartily concur with the Senator. No one, we apprehend, who is acquainted with the conditions will take issue with him on a single word of this statement, and

PROTECTION OF MIGRATORY BIRDS

it is only a question of proper procedure which causes any difference of opinion.

After the usual delays and conferences, this Appropriation Bill, with the migratory bird provision attached as rider, went through the House and was concurred in upon the part of the Senate. Then it received the signature of the President, and thereby became a part of the law of the land for the time being, but may still be subject to the scrutiny of the courts where its ultimate fate is made very doubtful.

This bill has since become known as the McLean-Weeks migratory bird law, and provides as follows:

All wild geese, wild swans, brant, wild ducks, snipe, plover, woodcock, rail, wild pigeons, and all other migratory game and insectivorous birds which in their northern and southern migrations pass through or do not remain permanently the entire year within the borders of any State or Territory, shall hereafter be deemed to be within the custody and protection of the Government of the United States, and shall not be destroyed or taken contrary to regulations hereinafter provided therefor.

The Department of Agriculture is hereby authorized and directed to adopt suitable regulations to give effect to the previous paragraph by prescribing and fixing closed seasons, having due regard to the zones of temperature, breeding habits, and times and line of migratory flight, thereby enabling the department to select and designate suitable districts for different portions of the country, and

GAME PROTECTION

it shall be unlawful to shoot or by any device kill or seize and capture migratory birds within the protection of this law during said closed seasons, and any person who shall violate any of the provisions or regulations of this law for the protection of migratory birds shall be guilty of a misdemeanor and shall be fined not more than \$100 or imprisoned not more than 90 days, or both, in the discretion of the court.

The Department of Agriculture, after the preparation of said regulations, shall cause the same to be made public, and shall allow a period of three months in which said regulations may be examined and considered before final adoption, permitting, when deemed proper, public hearings thereon, and after final adoption shall cause the same to be engrossed and submitted to the President of the United States for approval; PROVIDED, HOWEVER, That nothing herein contained shall be deemed to affect or interfere with the local laws of the States and Territories for the protection of non-migratory game or other birds resident and breeding within their borders, nor to prevent the States and Territories from enacting laws and regulations to promote and render efficient the regulations of the Department of Agriculture provided under this statute.

There is hereby appropriated out of any moneys in the Treasury not otherwise appropriated, for the purpose of carrying out these provisions, the sum of \$10,000.

Shortly after the opening of the extra session of the Sixty-third Congress, on the 7th of April, 1913, Senator McLean introduced another Senate resolution, similar to the one formerly presented by Senator Root, requesting the President to propose to the governments of other

PROTECTION OF MIGRATORY BIRDS

countries the negotiation of a convention for the protection and preservation of migratory birds. This resolution was favorably reported out from the Senate committee on foreign affairs, and, on July 7, 1913, was unanimously agreed to by the Senate. The matter is now in the hands of the President and State Department.

CHAPTER VIII

PROTECTION OF BIRDS BY INTERNATIONAL TREATIES

IN the preceding chapter we have called attention to the fact that two Senate resolutions have been introduced in the United States Senate, by Senators Root of New York and McLean of Connecticut, requesting the President of the United States to propose to governments of other countries the negotiation of treaties to protect migratory birds.

The author has advocated this plan of bird protection for a number of years. When he first proposed it, however, he was called a visionary theorist by several amiable gentlemen in New York who sit in comfortable easy chairs and arrogate to themselves all knowledge and authority on the subject of game protection, but whose practical knowledge and experience evidently consists in reading sportsmen's magazines and listening to speeches made by sportsmen at banquets. At the time referred to (1904) the writer had just read the proceedings of, and

INTERNATIONAL TREATIES

regulations proposed by, a convention of European ornithologists on the same subject, and he was instantly impressed with the possibilities for good which could be attained by similar proceedings on the North American continent. After a painstaking study of the European treaty regulations relating to migratory birds and a careful examination of the authorities of this country on constitutional law, we could find neither legal nor scientific barrier to such treaties on the part of the United States. On the other hand, the benefits to be achieved were at once manifest. If stipulations are entered into by the nations of North and Central America to that effect, the migratory birds will receive adequate protection throughout the entire course of their flight.

And in this country it is doubtless correct to say that such treaties would give Congress incidental power to enact suitable regulations applicable within the borders of every State in the Union to carry the treaties into effect, if such a course is found necessary and proper. The result would be that we should have not only a national migratory bird law, but an international one of far-reaching benefit.

The bill mentioned in the last chapter is of

GAME PROTECTION

doubtful validity, to say the very least, while, on the other hand, few legal authorities will dispute the constitutionality of an enactment to the same effect by Congress carrying out the provisions of an international treaty. It may be just possible, though, that all necessary and proper regulations could be promulgated by the treaty commissioners and incorporated as a part of the international stipulations. This would make such regulations the supreme law of the land in this country without further legislation by the Congress.

The experience of eleven nations of Europe has now fully demonstrated the efficacy of treaties in protecting international migratory birds. It is a matter of common knowledge in this country that many of the migratory birds of the Western Hemisphere occupy parts of the whole territory from the Arctic Circle to Central America in their annual flights. Therefore, the United States alone is powerless to afford them adequate protection. With the co-operation of the other nations interested, however, this could be accomplished. Hence, international treaties seem to be the real, logical, common-sense solution of the problem.

INTERNATIONAL TREATIES

We submit the following opinion on this question, which was prepared by the author at the request of a well-known game protective association, and the conclusions therein have since been fully concurred in by several United States Senators as being sound both in reason and upon authority:

HOW THE FEDERAL GOVERNMENT MAY ACT TO PROTECT MIGRATORY BIRDS

"From the earliest traditions the right to reduce animals *feræ naturæ* to possession has been subject to the control of the law-giving powers. . . . Undoubtedly, this attribute of government to control the taking of animals *feræ naturæ*, which was recognized and enforced by the common law of England, was vested in the colonial governments, where not denied by their charters or in conflict with the grants of the royal prerogative. It is also certain that this power, which the colonies thus possessed, passed to the States with the separation from the mother country, and remains in them at the present day, in so far as its exercise may not be incompatible with, or restrained by, the rights conveyed to the Federal Government by the Constitution." (This is the settled legal doctrine of the United States as to division of powers over animals *feræ naturæ*. It was first announced by the Federal Supreme Court in the case of *Geer v. Connecticut*, 161 U. S. 519; followed in *Ward v. Race Horse*, 163 U. S. 504; *People v. Silz*, 309 U. S. 31; *United States v. Smith*, 115 Fed. 423; *United States v. Thompson*, 147 Fed. 637; *Rupert v. United States*, 181 Fed. 87, and other cases, and conceded earlier in the case of *Lawton v. Steele*, 152 U. S. 133.)

GAME PROTECTION

This settled rule of law inevitably resulted from a careful examination of the provisions of the Federal Constitution and its history in connection with the following earlier doctrine:

"The wild game within a State belongs to the people in their collective sovereign capacity. It is not the subject of private ownership, except in so far as the people may elect to make it so, and they may, if they see fit, absolutely prohibit the taking of it or any traffic or commerce in it if deemed necessary for its protection or preservation or the public good." (Ex parte Maier, 103 Cal. 476. This rule has been announced by the highest courts of nearly every State in the Union, and approved and affirmed in *Geer v. Connecticut*, *supra*, and many other Federal cases. A few are *Magner v. People*, 97 Ill. 320; *State v. Rodman*, 58 Minn. 393; *Phelps v. Racey*, 60 N. Y. 10; *State v. Roberts*, 59 N. H. 256; *Com. v. Chapin*, 5 Pick. (Mass.) 199; *State v. Niles*, 78 Vt. 266; *Organ v. State*, 56 Ark. 270; *State v. Lewis*, 134 Ind. 250; *Cottrill v. Myrick*, 12 Me. 282, and Federal cases cited *supra*.)

Nothing would seem clearer, then, than that the control of animals *feræ naturæ*, which are strictly habitat of the United States, has been left by the Federal Constitution to the authority of the several States, and that Congress can find no warrant under that instrument to enact DIRECT legislation on that subject which would be applicable within the borders of the States, except on land over which the national government has jurisdiction. This State authority is among the powers reserved to the States by the adoption of the Constitution, and is safeguarded and secured to them by the 10th Article of Amendment thereto, and, in effect, means this: Unless, by some other provision of the Constitution, power has been delegated to the Federal Government to act in such a way as to affect this right, then that power is complete and absolutely exclusive with the States. But, on the other hand, if we find that the Con-

INTERNATIONAL TREATIES

stitution has delegated power to the Federal Government, the exercise of which, in whole or in part, may be inconsistent with or repugnant to this authority, then the latter must give way and is superseded *pro tanto* by the Federal power granted, for the latter must necessarily be supreme.

Now let us apply these well-known principles of constitutional law to the subject in hand, and see whether or not the Constitution HAS delegated any duties to the Federal Government which may give it authority to assume control over migratory birds.

First, it will be noted that in the Geer case, *supra*, the Supreme Court said that the power over animals *feræ naturæ* remains in the States to the present day, "in so far as its exercise may not be incompatible with, or restrained by, the rights conveyed to the Federal Government by the Constitution." There can be no question that the Constitution conveyed all power or right in respect of negotiating international treaties to the Federal Government, to be exercised by the President and the Senate.

This brings us then directly to the consideration of the main question. Conceding that the foregoing is the recognized, settled, and correct doctrine with respect to animals *feræ naturæ* therein mentioned, an inquiry regarding international treaties for the protection of migratory birds logically divides itself into four important questions,—viz.:

1. Is there such a thing as an unconstitutional treaty?
2. Is a treaty conflicting with the ordinary reserved rights of the States unconstitutional?
3. Is the question of how to protect and preserve migratory birds a proper subject for international treaty?
4. In carrying out the provisions of such a treaty, can Congress enact legislation which would otherwise be unconstitutional?

In advance of the answers to the above inquiries it can hardly be said that through the exercise of the treaty-making power the Federal Government could assume con-

GAME PROTECTION

trol over birds which are permanently located in a single State of the Union, nor of those which are migratory but confine their wanderings wholly within the boundaries of the United States, for all such birds would be of no concern to any other nation than this, and hence would not be proper and fair subjects of treaty negotiations. But it is an entirely different matter with those migratory birds which inhabit throughout the year various portions of British North America, the United States, Mexico, Central America, and other nations. And in discussing this question it should be assumed hereafter, that, when we speak of "migratory birds," only the species above mentioned are referred to.

Now, if it be clearly shown, and commonly admitted, that these birds are of value to mankind, and are of equal benefit to the nations mentioned, then such nations have a common interest in them and are mutually concerned in their protection and preservation. This being true, it seems that the matter plainly becomes one proper for international agreement and treaty obligations. Also, it may appear that if such treaty is not of itself sufficient, and its provisions not complete enough to carry into effect its object, but requires additional legislation for that purpose, the Congress would doubtless have power to enact proper regulations to that effect, even though it might appear that all necessary regulations could be incorporated as a part of said treaty, and the same would be part and parcel of the supreme law of the land.

1. Is there such a thing as an unconstitutional treaty?

This requires but brief discussion. A treaty is a compact made between two or more nations (*Fourteen Diamond Rings v. United States*, 183 U. S. 176), entered into for the common advancement of their interests and the interests of civilization, the securing of peace and the avoidance of war (*Tucker v. Alexandroff*, 183 U. S. 424). Under the provisions of the Constitution of the United

INTERNATIONAL TREATIES

States, which declares a treaty to be the law of the land, it is to be regarded in courts of justice as equivalent to a legislative act, whenever it operates of itself without any legislative provisions. (*Foster v. Neilson*, 2 Peters, 253; 11 Encyc. of U. S. Supreme Court Reps. 636.) It is not difficult to imagine extreme cases wherein a treaty might be declared to be unconstitutional, for, as said by Mr. Justice Field in *De Goefrey v. Riggs* (133 U. S. 258): "It would not be contended that it (the treaty-making power) extends so far as to authorize what the Constitution forbids, or a change in the character of the government or that of one of the States, or a cession of any portion of the territory of the latter without its consent." But ordinarily it is to be presumed that the President and the Senate would not transgress these limitations, and suffice it to note that since the establishment of the national government no treaty has ever been declared unconstitutional by any of our high courts, either State or Federal.

2. Is a treaty conflicting with the ordinary reserved rights of the States unconstitutional?

This appears to be the one vexed point, and casts the only doubt, though slight in measure, on the whole contention that the national government may assume to protect migratory birds by and through the treaty-making power. It is to be admitted that seemingly valid reasons have, and may be, advanced in support of an affirmative answer to this question, and such reasons are buttressed by numerous dicta and opinions of able judges and commentators; such as the obiter dicta of Chief Justice Taney in the *Passenger Cases* (7 Howard, 283), of Mr. Justice Daniels in the *License Cases* (5 Howard, 504), and the Court in *Prevost v. Greenaux* (19 Howard, 1), where it is said: "Whenever, therefore, an act of Congress would be unconstitutional, as invading the reserved rights of the States, a treaty to the same effect would be unconstitutional." But in spite of this and other strong dicta by our learned justices,

GAME PROTECTION

we have the real authority of numerous decided cases in which State laws with reference to matters within the ordinary legislative power of the States in conflict with existing treaties have been held void by the Supreme Court and other State and Federal tribunals. (Among these the following are important: *Ware v. Hylton*, 3 Dallas, 199; *Hopkirk v. Bell*, 3 Cranch, 603; *Fairfax v. Hunter*, 7 Cranch, 454; *Chirac v. Chirac*, 2 Wheaton, 259; *Latimeer v. Poteet*, 14 Peters, 4; *Hauenstein v. Lynham*, 100 U. S. 483; *De Goefrey v. Riggs*, 133 U. S. 258.)

The doctrine of these decisions is in full accord with the views expressed by our later leading commentators on the Constitution. For instance, Prof. Willoughby gives his opinion on this vexed point in a most conservative way as follows: "The author is convinced that the obiter doctrine that the reserved rights of the States may never be infringed upon by the treaty-making power will sooner or later be frankly repudiated by the Supreme Court. In its place will be definitely stated the doctrine that in all that properly relates to matters of international rights and obligations, whether these rights and obligations rest upon the general principles of international law or have been conventionally created by specific treaties, the United States possesses all the powers of a constitutionally centralized sovereign state; and, therefore, that, when the necessity from an international stand-point arises, the treaty power may be exercised, even though thereby the rights ordinarily reserved to the States are invaded." (1 Willoughby on the Constitution, sec. 215.) And in connection with the immediate question it is submitted that, whereas, a treaty attempting to give the national government the right to exercise power over all animals *feræ naturæ* within the United States, or those confined solely within the borders of a single separate State, might be held unconstitutional upon the palpable ground of not being proper subjects of international stipulations and invading the

INTERNATIONAL TREATIES

reserved rights of the States, yet the reasons for such ground are clearly weakened or wholly fail when applied to the case of migratory birds. The latter being habitat of two or more nations, and the length of time which they remain in each of the several States being very limited, therefore, the doctrine of international right of property in same is thereby strengthened, while that of the State loses much of its force. At this point, too, we may consider the fact, that, if the national right of control over these birds by the treaty-making power exists to-day, it has ever so existed since the adoption of the Constitution, for at that time the States surrendered all their rights with reference to international treaty-making to the Federal government, and the latter's power in that respect over international migratory birds has simply been dormant in the past because not brought into action by the President and Senate, but it has never been extinguished. In other words, this power of the Federal Government has always existed since its foundation, or else it does not exist now.

3. Is the question of how best to protect and preserve migratory birds a proper subject of international treaty?

It is at the present time a matter of common knowledge, which needs little support from expert evidence of ornithologists and other scientists, that these migratory birds in their flight over the Western Hemisphere occupy the territory between the Arctic Circle and portions of South and Central America, including the many adjacent islands. Thus, from time to time during each year, they inhabit parts of several nations. The value of these birds to mankind, and to the several nations mentioned, has long been recognized by scientists, and to-day is universally conceded. Since 1873 the nations of Europe have been negotiating international compacts to protect such birds. At present eleven of the leading powers of that continent have entered into conventions for that purpose, and the subject is fully recognized there, as elsewhere, as a fair

GAME PROTECTION

and proper one for treaty stipulations between nations. It is undoubtedly a proper object of "compact between two or more nations, entered into for the common advancement of their interests and the interests of civilization."

4. In carrying into effect the provisions of such a treaty, can the Congress enact legislation which would otherwise be unconstitutional?

Mr. Butler, in his work on *The Treaty-making Power*, puts the answer to this inquiry in this way: "That the power to legislate in all matters affected by treaty stipulations and relations is co-extensive with the treaty-making power, and that acts of Congress enforcing such stipulations which, in the absence of treaty stipulations, would be unconstitutional as infringing upon the powers reserved to the States, are constitutional, and can be enforced, even though they may conflict with State laws or provisions of State constitutions." (Butler on *The Treaty-making Power of the United States*, sec. 3.) And Prof. Willoughby says: "One final point with reference to the extent of the treaty-making power deserves notice. This is that where, for its enforcement, a treaty requires ancillary legislation, Congress would seem to have the constitutional power to enact the needed laws, even though these may relate to matters not within the general sphere of its legislative authority. For it is to be presumed that the General Government has the power to render effective a treaty which it has the constitutional power to enter into. A somewhat analogous case is the legislative power recognized to belong to Congress with reference to matters of admiralty and marine, because of the grant to the Federal judiciary of jurisdiction over admiralty and marine causes." (1 Willoughby on the Constitution, sec. 217.)

CHAPTER IX

STATE LAWS AND THEIR ENFORCEMENT

ASIDE from the fact that in the future we may expect the aid of the Federal Government, by way of co-operation with the States and by legislation of its own to protect migratory birds, still the protection of game generally in this country must hereafter, as in the past, depend largely upon State laws and their enforcement. Some of the States have been woefully recreant in their duty in conserving the game and fish within their borders, but public sentiment in those communities is gradually asserting itself, and the movement for better protection is going forward at a hopeful pace. The legislatures of the various States usually reflect public opinion by their acts. Clearly, then, the thing to do is to arouse and educate that public opinion. Doubtless this can be aided and accelerated by those interested organizing into local associations, with representation from such societies affiliated with and formed into State leagues. With such organizations working in harmony and controlled by

GAME PROTECTION

energetic, unselfish men who have the best interests of game protection at heart, all necessary legislation can be procured without much difficulty.

Knowledge and experience, both here and abroad, have demonstrated what the fundamentals of such legislation should be. Certain well-defined lines must be pursued in each State, and seldom varied in degree to meet local conditions. In another chapter we have pointed out that this legislation should comprise a system of sane, simple, and scientific laws.

One of the most important rules, which should be strictly adhered to but which is in fact very generally neglected and departed from, is that these laws should be uniform in their operation throughout the State. The curse of many a system is its local provisions. In some States the laws vary so extensively in different counties and sections that it may be truly said that a real system does not exist at all. All is hotchpot and confusion, and only a few natives of the locality affected are familiar with the laws. This conflict of statutes cannot possibly result in any benefit. It is a pure delusion and proceeds from the selfish desires of a community to apply the

STATE LAWS

principle of local self-government in the wrong direction. When we remember that the game of a State belongs to all the people thereof in their collective sovereign capacity, and that the right of property therein is equally vested in each member of the commonwealth, it is plain that some of these local statutes are class legislation of the most vicious type. A person residing in one part of the State has a right in game in another part equal to that of those who reside in the latter, so why should he be subject to entirely different and more stringent regulations respecting the same? There is constant complaint throughout the country against these unfair exactions of the game laws, and they are just complaints, too. Besides, these local provisions mitigate strongly against the success of proper protection of the game.

If game is abundant in one county of the State and scarce in another the provisions should be uniform nevertheless, thus aiding the established theory of conservation by co-operation,—that is, by permitting the abundance in one section to overrun the surrounding country and replenish the covers in the latter section. Local provisions

GAME PROTECTION

also retard the work of enforcing the laws, and it is to be hoped that they will be eliminated in every State in the future.

Now, every up-to-date game code contains the essentials which have been found necessary to afford proper protection of game by law. These essentials may be summed up as containing the following regulations: 1. Providing proper open and close seasons. 2. Prohibiting all unusually destructive means and methods of hunting, fishing, or exterminating game. 3. Providing a bag-limit,—that is, limiting the amount of game allowed to each sportsman by the day and during the open season. 4. Forbidding the sale of or traffic in game and regulating the transportation of same. 5. An Audubon law, so-called, protecting at all times useful insectivorous birds not fit for food. 6. A license law compelling all those who hunt or fish to register and pay a tax. 7. Providing for the purchase and regulation of propagation farms, fish-cultural stations, and game refuges. 8. Establishing a game commission to enforce the laws and carry on the work of propagation. We now propose to treat these provisions briefly in detail.

STATE LAWS

OPEN AND CLOSE SEASONS

The proper time to permit hunting and killing of game mammals and birds is in the fall of the year and during the early part of the winter; the proper time for fishing is in the spring and during the summer months. This, of course, is elementary in the theory of game protection by law, for the reasons given in another chapter as being a part of a system of sane, simple, and scientific laws. And yet how many of the States seem to have forgotten, neglected, or cast aside these important principles to satisfy selfish impulses! There are still a few States which permit spring shooting of wild fowl. Think of the shame of it! Such a regulation is inconsistent with every dictate of reason, business policy, sound principles, and common humanity. If this practice is to be tolerated, all reasons for game protection by close seasons are swept aside, and we may as well abandon that theory as a method of conserving the wild life. It is a matter of common knowledge that wild fowl are mating and on their journey to the nesting grounds during their spring migrations northward. Then, why kill them at such an inopportune moment? It is simply inhuman to do so.

GAME PROTECTION

With rare exceptions, it goes without saying that the open seasons should be uniform throughout the State. It is true that there are exceptional instances when it is provident to have local provisions relative to certain portions of a State, or applying to certain lakes, ponds, or streams; but these are very rare and should be eliminated whenever feasible. The most advisable plan is to have the open seasons for various species of game commence concurrently; that is, providing that the right of taking small game shall begin at one time, and include big game during some part of that time, and then close entirely for all game on a specified date. Experience has shown, also, that when a close season has been prescribed, it should be closed against hunting and fishing of every description; and it is a very practicable and effective statute which provides that it shall be deemed *prima facie* evidence of a violation for one to be found in the game covers armed with a gun during the close season, or so found on the waters with fishing tackle in possession. Any other plan for close seasons means "closed" in name only. The above provision will doubtless be found in every game code of the future.

STATE LAWS

PROHIBITING UNUSUALLY DESTRUCTIVE METHODS

The only legitimate method of hunting game mammals and birds is by use of the gun or rifle; the only legitimate way to catch game fish is with the hook, rod, and line. This is also elementary. Real sportsmen scorn any other means, and those who are not "real sportsmen" should be compelled by law to conform to these methods. Of course, this prohibition should include all use of traps (except for catching fur-bearing animals), snares, salt-licks, ferrets, jack-lights and night hunting, punt-guns, spears, nets, etc. With the dog, however, the case is different. The hound, setter, or pointer dog is man's most agreeable companion and aid in the pursuit of game in the fields and forests. Without him legitimate sport on certain well-recognized lines would be tame indeed. This does not imply, though, that it is expedient or advisable to permit dogs to hunt at will and run at large. The damage done by self-hunting dogs when allowed at large in bird covers and forests inhabited by deer is simply incalculable. Every spring, before the snow leaves the hillsides and doe deer are heavy with

GAME PROTECTION

young, literally hundreds of these animals are driven to their death by mongrel self-hunting dogs, and later the same is true as to the destruction of ground-nesting birds. The writer is a lover of the dog, but experience has taught him that there is only one remedy for this evil. The self-hunting dog must go, or the game will, so the rule of law must be made against the former. Placing a penalty upon the keeper for the misdeeds of his dog is not of itself a wholly effective statute, but when it is also added "that any person may without legal liability, and it shall be the duty of all game officers, to kill such dog when so found" in the act of self-hunting or running at large in the forests or game covers, the result is astonishing in its efficacy.

BAG-LIMIT LAWS

The objection usually made to laws providing for a bag-limit, or those limiting the amount of game or fish which can be killed or taken in a day or during the open season therefor, is that such measures cannot be enforced. And this objection is frequently made by our most respectable theorists. The author suspects that some of these gentlemen, at least, have a con-

STATE LAWS

cealed objection somewhat at variance with this ostensible one. Is it not just possible that they object more seriously to being inspected in the game fields by officers of the law? Do they not object to their dignity as citizens being thus shocked, and their right of personal liberty against search and seizure being so rudely disturbed? Perhaps, after all, this latter objection has something to do with the matter, for the writer, after a field experience of many years as a game officer, never found any difficulty whatever in enforcing such laws when they were properly drafted. On the contrary, he has advocated them for years, and experience has demonstrated that they are among the wisest and most salutary measures we now have, and in 1912 they existed in every State of the Union except three.

It is true that the enforcement of bag-limit statutes requires strenuous efforts upon the part of the game officers, but not one whit more than any other effective measure. With well-enforced laws of this class the problem of dealing with improved firearms manufacture is half solved. We need not disturb ourselves much about automatic guns, pump-guns and repeaters if each

GAME PROTECTION

hunter is allowed only a certain amount of game per day and he realizes that the heavy hand of the law will fall upon him if he exceeds that limit. The same is true of the fisherman. At the same time we would not have this statement construed as meaning that the writer sanctions the use of some of the late improved, destructive and death-dealing weapons now upon the market. On the contrary, he deprecates their use by fair-minded men; yet it is difficult to see how we can stay the progress of invention. It seems as impossible to do this as it is to interfere with the movement of the planets. It goes merrily on its way in spite of our humble objections, and, when we see the motor-car of invention and progress approaching, we feel that we shall be cruelly run down unless we get out of its path. For this reason we are in favor of recognizing these inventions as existing facts with which we are bound to cope in a reasonable way. Hence, we favor stringent bag-limit laws and extra effort put forth in enforcing them.

It is folly to attempt to say what these limits should be, for the conditions in each State must govern in such cases and determine that matter. Nevertheless, as a precautionary measure, it may

STATE LAWS

be said that it is always wise to set the limit too low, rather than too high, for if once the mischief of large bags is done it is almost irretrievable. We trust that the days when man was permitted to kill game for the mere pleasure of slaughter are about at an end. Each sportsman should be allowed only such a bag as the conditions warrant and the interest and welfare of others may sanction as a reasonable amount. In reference to season bag-limit laws, it may be said that local game officers find little difficulty in enforcing such measures when they are in close touch with their duties and acquainted with the sportsmen of their locality, for in these cases it is only a question of memory on the part of the officer in "keeping tabs" on the hunters and fishermen. In closing, however, it is doubtless well to call attention to an important legal provision which should be inserted in bag-limit laws. When the limit to the amount of game to be taken in a single day is prescribed, the statute should be so drafted that it cannot be successfully evaded by subterfuges or misconstrued. For instance, suppose it is desired to limit the number of quail which one person may take in a day to five. The statute should provide: "No person shall take or kill

GAME PROTECTION

more than five quail in one day; and having in possession at one time the dead bodies of more than five quail shall be *prima facie* evidence of a violation of this act." Thus, the enforcement is made certain and to effect.

FORBIDDING THE SALE OF AND TRAFFIC IN GAME

A law prohibiting the sale of or traffic in game is a present-day necessity. It must be at once recognized that hunting and fishing as a business occupation is a relic of bygone days. Even trapping fur-bearing animals, which is generally indulged in for profit alone, requires strict regulation. So great has been the decrease in the number of these animals within the last decade that several species have become almost extinct, and there is now little profit in trapping, except in the most remote districts. In the last few years we have heard much about mink, fox, and skunk farming in the attempt to replenish the supply, so it is evident that the trappers, professional and otherwise, are beginning to realize that unless efforts are made toward increased propagation their occupations will be a thing of the past.

But necessity absolutely demands that the

STATE LAWS

occupation of the "market hunter," who supplies city snobs and hostelrys from the public game domains, be destroyed by law forthwith. In the place of the "market hunter" cold-storage produce-dealers should look to the private game farms and breeders' camps for their future supply of game. There is no question but what there exists a legitimate demand for game for food, but that demand has no right to expect that it will be supplied at the expense of the public welfare.

The right of transporting game within or without a State should be prescribed by a just and comprehensive statute after the conditions and economic needs of that State have been duly considered. Nevertheless, it is a rank injustice to non-residents of a State to permit them to hunt or fish therein and then not be allowed to transport to their homes, when they accompany the same, a reasonable amount of game taken on their vacations. This should not be done.

PROTECTION OF INSECTIVOROUS BIRDS

Little need be said on this topic. The value of insect-eating and weedseed-destroying birds to agriculture and forestry, and as economic factors

GAME PROTECTION

generally, is now so thoroughly established and admitted that it is everywhere agreed that game codes are sure to take care of this feature. The only question seems to be as to what species of birds are most important. As investigations of ornithologists and biologists proceed, however, the classes are being enlarged so rapidly by new discoveries in favor of the birds that at present time there are few, indeed, which may be classified as obnoxious to mankind. In providing for protection for these birds, then, it is much better that the law be comprehensive and include too many than too few species. There are a few hawks, owls, jays, and sparrows which may possibly be excepted from the protected class, but any exceptions at all should only be made after consulting the latest information and authorities on the subject. The chief difficulty in securing results in the past seems to have been that the penalties prescribed for violations of these laws have been too mild. Those States in which the penalty has been severe have undoubtedly obtained wholesome results. A jail sentence is the most salutary, and especially so with a class of ignorant foreigners who have been the worst offenders in this line. Also, some of the States

STATE LAWS

are taking advanced ground along this line by banning the use of the modern air-gun which does so much damage in the hands of the younger generation.

LICENSE REGULATIONS

As showing the rapidity with which the hunting license idea has gained ground, we call attention to the fact that in 1904 there were 31 States requiring non-residents to procure licenses, and in two States—Missouri and Arkansas—non-residents were not permitted to hunt at all. In 1912 this number had increased to 46, or every State in the Union except two,—Arkansas, which still continued to exclude non-residents, and Delaware. Likewise in 1904 thirteen States imposed like restrictions on residents and in 1912 this number had increased to 36, so it is plain that it is only a matter of time when this system will prevail throughout the country. License laws are the logical outcome of the game situation and have come to stay. But why these provisions should apply only to hunting and not to fishing has always passed the writer's understanding. For years artificial propagation of fish has been carried on in almost every State of the Union.

GAME PROTECTION

Numerous fish-cultural stations have been permanently established, with expensive equipment and salaried experts in charge, and yet most of the expense for same is borne by the hunters alone. It won't do, and the complaint from the hunters is growing stronger against this injustice every year, and they are sure to be heard and heeded in course of time. So it is only reasonable to expect that fishing licenses will follow the hunting licenses throughout the country in due time as a part of every system of game protection.

Each State has its own idea as to the sum to be prescribed as a license fee, and rightly so, for economic conditions must govern in such cases. Some sportsmen believe that non-residents should not be discriminated against in the matter of fee and conditions governing these licenses, but we can see no ground for such a proposition. The game belongs to the people of that State where it is found, and it is their duty to preserve it for their own use. So, when such people permit those of another State to hunt and take their game, it is a mere privilege or courtesy they are extending to the latter, and they may annex to this privilege whatever conditions they see fit. This is the legal doctrine of the situation, and is just in every re-

STATE LAWS

spect. Hunting and fishing are not among the privileges and immunities of citizens of the United States, safeguarded by the Federal Constitution. As Chief Justice Waite, of the United States Supreme Court, once said, they are not privileges and immunities of general, but of special citizenship,—that is, citizenship of that particular State. The game belongs to the people of that State, and they own it “not by virtue of citizenship merely, but of citizenship and domicile united,—that is to say, by virtue of a citizenship confined to that locality.” Therefore, it is a question for each State to decide what license fee is to be charged to hunt or fish within its borders, and the common welfare dictates that if the game is scarce the State may not desire the presence of outsiders at all.

The best business policy of the States, however, should determine all the factors and questions regarding these licenses, and they should remember that it is a sound principle to be followed everywhere that the proceeds from these licenses should be invested in continuing the work of conserving their wild life. This should be the exclusive disposition of these funds, but we find that in some States they have been diverted to

GAME PROTECTION

other purposes. The united protests of those who have contributed will probably change this in the future.

GAME REFUGES AND PROPAGATION

The last stand of the game on this continent will be made upon special refuges, either private in character or State owned and controlled. All who have studied the subject and its history, and have watched—perhaps at times impatiently, but always with deep regret—the changing conditions and gradual decrease in the supply of game, are of one mind in the above opinion. The only question is, which will it be? Will we as a nation take our place with the European countries, with their well-stocked private shooting grounds under the control of wealthy sportsmen, or will we contest every foot of that plan by a system of extensive public refuges in every State of the Union, where the wild life is left to increase and multiply unmolested, with the increase overflowing the surrounding territory and furnishing a fair amount for the benefit, profit, and recreation of all of the people? The outlook at present is not altogether promising for this ideal plan, and yet it is not wholly devoid of encouragement.

By examining the annual reports of the game division of the United States Biological Survey, we note that there has been a notable increase in the number of public refuges—both State and Federal—within recent years. But there is great need of more of them. The crisis is drawing near, and if more effort is not exerted in this direction soon it may be too late. Minnesota appears to have taken the lead among the States in this duty, and others are coming forward in a most encouraging manner; while in the Congress of the United States the cause of game conservation has at last found a few able and enthusiastic champions who are assisting the members of the Biological Survey in establishing Federal refuges. In all of which there is hope, but it is believed that when the importance of this question is more fully understood, and the above statement in reference to the final stand of the game is burned into the brains of more of the practical conservationists, the work will be greatly accelerated. It is unquestionably the most important move of the hour to safeguard and vouchsafe to future generations any game whatever. In the selfish desire of the present generation to increase the game supply for its own use and enjoyment, we

have rushed into all sorts of schemes to propagate foreign game birds, and thousands—aye, millions—of dollars have been wasted in futile theories and experiments. There is no doubt of the utility and benefit of game-breeding farms when properly conducted, and artificial propagation of fish has long since passed the experimental stage and entered that of a successful business proposition; but may it not be possible that expenditures on this line have gone too far, while the more certain plan of obtaining permanent results by game refuges has been neglected? Let us see what these refuges mean to the public. If a policy is pursued by every State and the nation at large of acquiring new holdings of land annually and setting them aside for game refuges, it is only a matter of time when this public domain will be an immense one. Also, the game will be abundant thereon. Of course, this supply will overrun the adjoining country, and should it happen in future years that, owing to the general scarcity of game, wealthy sportsmen should purchase this outside land for their own private use, the people would still have a limited opportunity to hunt upon the public domain, although it is admitted that this means the last stand of the

STATE LAWS

game as mentioned above. It is really expected, however, that such an eventuality can be avoided. But it simply shows the future possibilities of game refuges. They are, indeed, unlimited in their possibilities for the general good in the cause of game conservation.

We will not enter into extended discussion of game farms, for they are more or less experimental luxuries to be indulged in by the wealthier States. After the latter have demonstrated their practical utility and pointed out the proper manner of handling them, the smaller States may follow with safety. Nor need we discuss artificial fish propagation. That proposition, as we have said, is now on a sound basis and is a necessary adjunct of the game commissions in every State, and all the States are receiving valuable aid in this work from the United States Fish Bureau.

GAME COMMISSIONS

The need of special officers to maintain the department of game and fisheries and enforce the laws relating thereto, is recognized in almost every State, and it has been briefly pointed out in another chapter when and where the original legislation to meet this need occurred. As there

GAME PROTECTION

are "many men of many minds" on the question of how these commissions should be organized, of how many members composed, whether the members thereof should be salaried officials or serve gratuitously, whether the term of office of such members should be long or short, etc., we will not discuss that matter; but suffice it to say that, besides the executive head or heads of such a department, it is imperative that there should be a number of field officers, variously termed game wardens, protectors, deputy commissioners, or game constables, under salary and constantly employed in patrolling the forests, fields, and waters, making arrests and prosecutions for violations of the law, preventing and extinguishing forest fires, caring for and reporting to the head of the department the condition of the game and other useful statistics, and co-operating in educating the public concerning the benefits of game conservation.

In the past the work of these field officers has, indeed, been onerous and difficult. Their mission seems to have been misunderstood. They were criticised, abused, maligned, and misrepresented in a shameful manner by the very people who were most benefited by their services. At one time the

STATE LAWS

attacks upon wardens in sportsmen's magazines became so frequent, virulent, and misleading that the author attempted to answer a few of these critics by calling attention to the real facts of the matter. As the conditions of the present are not much different from that time, we conclude this chapter by quoting in part from an article by the writer which was then published in one of the leading sportsmen's magazines, as follows:

In reading the sportsman's magazines and other periodicals, we invariably find letters from sportsmen complaining of the non-enforcement of the game laws in different sections of the country, and the woeful neglect and inefficiency of the local warden. How seldom do we read anything in praise of the game warden, or answers to these complaints, wherein the warden's side is set forth. We have heard only one side—the sportsman's side. He has found intolerable conditions in some locality and complains of them, and yet he does nothing to aid the warden in ameliorating those conditions.

The sportsman may sit in his comfortable home and complain of the warden's incompetency, but if that same sportsman undertook to enforce the laws he might have a different story to write. In the first place, game wardens are the poorest paid officers in the country, and in the second place they are seldom given sufficient powers and support to enforce the laws and protect themselves. Three-quarters of the wardens receive no pay whatever, and yet their work is decidedly of the most difficult and strenuous character. There is no "glory" in the service, either, and all that a successful warden generally receives is criticism

GAME PROTECTION

and abuse. If he is slow and timid about making arrests, he is ridiculed and called a "spineless" warden. If he enforces the law rigidly, then he is abused by those whom he prosecutes and criticised by others for being "over-zealous."

A warden is necessarily an executive and prosecuting officer in one, for he must secure his evidence and produce his man before a conviction can follow. For this service he receives a salary, a fee, a part of the fine, so much per diem, or no compensation whatever, as the case may be in different States. He must labor with many handicaps. Very few States empower him to search without a warrant—a power absolutely necessary, since in most States the possession of illegal fish or game is equivalent to a conviction. To be successful he must possess all the qualities of an accomplished detective, and at the same time be tireless, energetic, honest, courageous, and enthusiastic for the cause which he represents. What are some of the handicaps? We must remember that very few violations occur in the cities or populous sections. They are committed where the fish and game are found,—in the lonely forests, by the isolated lakes and streams, and on the distant waters. It is hard to secure evidence in a case from farmers and pioneers in sparsely settled districts. These natives do not like to testify in court against an offender for fear their barns will be burned, their cattle poisoned, or themselves ostracised for turning informers. Or in many instances they are opposed to the game laws in general and sympathize with the poachers.

If we secure men as deputy wardens in these sections, we cannot expect much from them, for if they do their duty and cause a prosecution they become unpopular with their neighbors. If they receive little or no pay for their work they are sure to say: "Well, I guess I'll give up this warden business. I have made too many enemies and the pay is so small. There's nothing in it." So we find that

STATE LAWS

the regular warden or protector must depend, almost wholly, upon himself in enforcing the law. To accomplish this means extensive travelling—mostly on foot—lonely waiting, watching, and resourceful scheming to outwit the violator. I have, as yet, not mentioned the personal dangers that may menace a warden, with the poachers and violators, and their sympathizers, all in league against him.

Suppose our warden or protector clings doggedly to his work and gets his man in every case. Each time he prosecutes an offender he makes a consistent enemy of that man, and the latter's friends become his secret enemies. These secret enemies work in the dark and injure the warden when he least expects it. They are men who "knife him in the back" and attack him in cowardly fashion. Now, if the warden keeps up his pace vigorously, at the end of a year or so he will begin to look about him and take his bearings. He finds he has drifted so far out on a sea of unpopularity that he knows not where to look for a friend. Where are all those sportsmen friends he had a year ago who were going to support him to the bitter end if only he did his duty? Alas! They have all abandoned him. Those who are opposing him are so open and loud in their denunciation that his few remaining friends raise but a feeble voice in his behalf. These friends feel that they will be on the unpopular side if they uphold the warden, and to be on the unpopular side would be detrimental to their business. The warden's enemies are always alert and active, while his real friends are prone to be indifferent and permit things to work out his end or salvation. So he is left to his own resources and melancholy reflections. He soliloquizes after this fashion: "Why is this so? Have I not tried to enforce the laws honestly? I was informed that is what I was appointed for. I was also to be supported by the best men of the community. Now, people turn on me or shun me—people whom I have never harmed in the least. Can I afford this sort of persecution? How much pay have

GAME PROTECTION

I received for all this hard work and unpopularity? Not sufficient to support my family. Very little, indeed, so I think I'll retire."

That is the way nine successful wardens out of ten are treated, and that is why they either resign or become inactive. And when the warden becomes inactive or powerless, then his enemies, with renewed efforts, begin to write to the State Commission and point out his short-comings. Some complain of his incompetence, some of his ignorance or discrimination in enforcing the laws, while others even attack his honor or motives. In time the commission will take cognizance of these protests and the warden gets a "calling down."

This is the final straw. With all these elements arrayed against him, of course, the warden is helpless, and it is impossible for him to discharge his duties properly. His good record of the past is forgotten, the difficulties and conditions of the present are not considered, and the future prospects of fish and game protection in that community are ignored. But where is the enthusiastic sportsman, who was so quick to condemn the warden, that is willing to take his place and enforce the laws?

These are not all of the warden's troubles. He must often face criminal poachers, heavily armed, who will take advantage of him, if he is not careful, and shoot him down, and under the laws in some States the warden is compelled to go slow in drawing his own weapon. Even the State's representatives in the courts often seem prejudiced in their dealings with game wardens.

CHAPTER X

FIELD-WORK OF GAME OFFICERS

THE work of a game officer in investigating violations of the laws for the protection of fish and game is, in its chief essentials, nothing but detective work, pure and simple. It is work of criminal investigation, and as such it requires as an absolute qualification upon the part of its exponent a fair knowledge of the principles of our American criminal law and criminal procedure. Without this knowledge a warden is constantly groping in the dark, and he never knows whether his actions will be sanctioned or condemned when his cases are brought to the attention of the courts where they must inevitably land in the end. This point cannot be too strongly emphasized. No matter how clever and energetic a warden may be in other ways, if he is ignorant of criminal procedure he will be a failure in course of time. If he works in disregard of the law, his activity is only certain to get him into trouble so much the sooner. Therefore, he must be familiar with the rules of criminal procedure. Conceding now that

GAME PROTECTION

he has acquired a working knowledge of the law, what other qualification is requisite to his success? It must follow that he should possess some slight ability, either natural or acquired, as a detective. No special set of rules have ever been laid down by the great detectives of the world, for the simple reason that no set of rules will apply to all cases. Each case demands its own particular treatment, and only in a very general way can the experienced detective aid us with advice. But there are some essentials that are always necessary to successful detective work. Read what two of the greatest detectives on this continent say as to these requirements. One of these men is the late famous Allan Pinkerton, of Chicago, Ill., and the other is John Wilson Murray, of Toronto, Can. Mr. Pinkerton says:

Many unthinking people have come to believe that there is something mysterious, wonderful, and awful about the detective. All my life, and in every manner in my power, I have endeavored to break down this popular superstition, but it would seem that it could not be done. It is undoubtedly true that the successful detective must be possessed of faculties fitting him for his peculiar character of work. The detective must possess certain qualifications of prudence, secrecy, inventiveness, persistency, personal courage, and, above all other things, honesty, while he must add to these the same quality of reaching out and becoming

FIELD-WORK OF GAME OFFICERS

possessed of that almost boundless information which will permit of the immediate and effective application of his detective talent in whatever degree that may be possessed. And this is all there is to the very best of detectives.

If there is mystery attached to his movements, it is simply because secrecy is imperative, and that will never consist in vague hints and meaningless intimations. He must possess a mind which is the equal and, if possible, the superior of his antagonist. He must be endowed with a clear, honest, and comprehensive understanding, and a force of will and vigor of body necessary to overcome the nature and the disposition of the men with whom he has to contend, assimilating as far as possible with the individuals who are destined to feel the force of his authority, and, by appearing to know but little, acquire all the information possible to gather from every conceivable source and in the least curious or inquisitorial manner. Where the detective is found to possess these qualifications, success attends his operations.

John Wilson Murray says :

A good detective must be quick to think, keen to analyze, persistent, resourceful, and courageous. But the best detective in the world is a human being, neither half-devil nor half-god, but just a man with the attributes and associations that make him successful in his occupation. A good memory is a great help; in fact, it is essential to the equipment of a clever detective. As a matter of fact, the detective business is just a plain, ordinary business, like a lawyer's business, a doctor's business, etc. The business is full of vexations. There are times when you know to a certainty the doer of a deed, yet arrest must await until the evidence is in hand. Sometimes the evidence never comes, and you see the years go by, with a guilty man enjoying the liberty denied to another, no more guilty, who

GAME PROTECTION

had not the good fortune to lose some links in the chain of evidence that surrounded him. It is the law of chance.

I believe in circumstantial evidence. I have found it surer than direct evidence in many, many cases. Where circumstantial evidence and direct evidence unite, of course the result is most satisfactory. There are those who say that circumstances may combine in a false conclusion. This is far less apt to occur than the falsity of direct evidence given by a witness who lies point blank, and who cannot be contradicted save by a judgment of his falsity through the manner of his lying. Few people are good liars. Many of them make their lies too probable; they outdo truth itself. To detect a liar is a great gift. It is a greater gift to detect the lie.

In a recent interview, William J. Burns, who is to-day recognized as the greatest living detective in this country, put the whole matter of a detective's work in this way:

As a matter of fact, there are no mysteries. **EVERY CRIMINAL LEAVES A TRACK.** Sometimes it takes unusual effort to uncover this track, but there are always ways of finding it and of following it up to a proper solution of the crime. No matter how cleverly a crime has been planned, the criminal always leaves a trail that may lead to his detection. I have demonstrated this in every important investigation I have ever made. The finding of writers of anonymous letters illustrates only a little of what I mean when I say there are no mysteries. I don't care what the case may be, every criminal leaves a track by which he may be traced. The criminal understands this after you get him, though he has made his plans ever so carefully; but he thinks that the next time he will not be caught. "The next time" he will just as surely leave a

FIELD-WORK OF GAME OFFICERS

track—of another kind, perhaps, but a track nevertheless. It all seems so simple—afterward. It always seems that the particular track left might have been avoided.

It has always been my practice that, when I take up a serious investigation, I first carefully go over all the facts at hand and then formulate my theory. In following out the investigation, from time to time I may find it necessary to change my theory to make it fit the facts, but never the reverse. It frequently happens that one is able to go over the facts in hand, and without any investigation determine the identity of the guilty parties.

Now, in all these cases the trail is perfectly clear when you see it from the inside. You must make up your mind each time, how you're going to approach the matter in hand, for everything in the world depends on how you go about a thing.

Now, to sum up what the best detectives teach us, success in each and every case means the application of common-sense rules to that particular case, persistent effort, patience, and a careful attention to details; avoiding no hard work that seems essential to the case, and hanging on with a bull-dog grip until success is achieved or there is positively no hope left. We will take a typical warden case and attempt to illustrate some of the primary rules of the detective business.

The warden is notified that a deer has been killed in a certain section and its carcass has been found. He immediately gains all information possible from his informant and makes inquiries

GAME PROTECTION

of the party discovering the carcass. In doing this, and, in fact, when making inquiries at any time, he should keep steadily in view Mr. Pinkerton's rule of "appearing to know but little, acquire all the information possible, in the least curious or inquisitorial manner." The importance of this rule in detective work can hardly be overestimated. If the warden begins to question and cross-examine every one he meets in connection with his work in a sharp and harsh manner, as though the party were on the witness stand in court and charged with some offence, he will secure very little information. On the other hand, if the warden uses tact and diplomacy, and only asks an important question now and then as if in the course of a casual conversation, he is more likely to secure the information he desires. Let this be kept in view at all times.

Assuming that the warden has acted as above suggested, he then gets on the scene of action as quickly as possible. This celerity of movement is necessary so that the officer may have the benefit of any ground clues that may remain about the carcass. Upon arriving at the scene, the warden first attempts to ascertain how the deer was killed. He examines the body carefully and minutely for

FIELD-WORK OF GAME OFFICERS

wounds. If the deer has been shot, and there are no signs of the carcass having been moved, the warden notes where the bullet entered by means of the hair having been driven inwardly. He then notes the direction the deer was standing or running when it fell. Keeping this in mind, he now examines the ground and surrounding country for tracks of the poacher, tracks of the deer to ascertain if it ran after being shot, etc., empty shells from guns, and any other clues that will lead to the identity of the slayer. In the mean time, if he finds the bullet did not go through the deer but remains in its body, of course he has extracted it. This he will have calipered to discover the calibre of the gun or rifle, and keep as an important exhibit in the case.

If he has found the back track of the poacher (which is often possible if there is snow or much muddy ground in the neighborhood), he will follow this faithfully and unerringly till it leads to a habitation or other destination. When such is found, if a part of the deer carcass was missing, the warden will make all haste to procure a search warrant and search the place before the meat has been consumed. If the process of securing a search warrant requires too much valuable time,

GAME PROTECTION

then he will attempt to enter the place without such warrant by subterfuge. This can often be done without the officer exceeding his authority. For instance, if he finds the doors or windows open and no one to answer his knock, he may enter. Or he may summon the inmates and request their permission to search the place, and may do so with the occupant's, or his agent's, consent. If he finds any of the deer meat in possession, the warden should arrest the head of the house at once without a warrant. If he does not find a part of the deer in possession, but finds other incriminating evidence which gives a reasonable cause to believe he has found the guilty party, he may arrest him on suspicion then and there.

Assuming none of the above clews have developed, is the warden's case hopeless? Must he give up all hope of apprehending the violator? Not necessarily. He will return to the carcass at the scene of the killing (or to the scene if he has arranged to have the carcass removed for safe keeping and future evidence), and note about how long the deer has been dead. Then he will commence a systematic inquiry of the neighborhood. He will ask all the natives if they heard any shots at such and such a time. Did they see

FIELD-WORK OF GAME OFFICERS

hunters in that vicinity, and when? What sort of a rifle does so-and-so own? If the warden suspects a certain individual, he will inquire: Did you see John Smith (giving the correct name of the party) on such a day? Where was John Doe at such and such a time? What is Richard Roe doing now? Does he hunt much, etc.? All the inquiries will be made, of course, in a careful, tactful, and circumspect manner, while apparently in the course of a casual meeting and conversation.

Should all the above efforts prove entirely futile, the warden should not be discouraged. He must study the case from every angle and attempt to form some common-sense theory of just how the crime was committed, and then endeavor to discover evidence that will correspond with this theory. He should keep this case in his mind, and as long as it has not been outlawed by reason of the statute of limitations, he may be able to take it up and carry it to a successful termination. But the chances are, if the above work has been performed in a careful, painstaking, and conscientious manner, it will bear fruit, although there is often a case, as Mr. Murray says, "when you know to a certainty the doer of a deed, yet arrest must await until the evidence is in hand."

GAME PROTECTION

Nevertheless, this hard and careful work will aid and develop the warden's power and ability for his future cases.

TRACKING AND TRAILING VIOLATORS

A most valuable aid to wardens in their work in the woods is a thorough knowledge of the art of tracking and trailing. Some men possess a natural faculty for this work, while others can only acquire it after much study and effort. It can only be learned by experience. If the warden is an experienced still-hunter and has trailed many a bear and deer, he will find that the knowledge thus acquired now stands him well in hand. He will read accurately from the "sign" he sees in the woods just what has happened in his absence, or what is then happening in his immediate vicinity. In other words, what is happening in the woods will be as an open book to him. He should also have a correct knowledge of the ways and methods of poachers and violators, as well as being familiar with the ways, habits, haunts, and habitat of the fish and game he seeks to protect. Pursuing a violator whose presence in the forest at the same time has been discovered by the warden by means of a "sign" is accomplished in a similar manner to

FIELD-WORK OF GAME OFFICERS

hunting down a watchful deer or a wary old bear. The warden follows him noiselessly and carefully, but none the less certainly, by the sign he sees as he goes along. He will travel a short distance, then stop, watch, and listen. He will observe when the scent is getting hot, and will then proceed slower and with more caution until he comes within sight or hearing of his quarry. He will be careful that his presence is not discovered. When he overtakes the poacher thus, the warden will secrete himself and await developments. If nothing unlawful occurs, the warden can silently withdraw from the scene, and, if he has been mistaken in his pursuit, no harm is done and no one is the wiser for the move. Now, on the other hand, if the law is violated, the warden is a silent witness to the act and prepared to take whatever action he deems best. He can either arrest the offender on the spot or continue his surveillance at close quarters until he secures more evidence, or gets his party where he can call in help, as the case may require.

As in other matters of detective work in the woods, no extended rules can be laid down for trailing in all cases. In each emergency special treatment will be needed. A few general rules,

GAME PROTECTION

however, may appropriately be kept in mind. It is not necessary to have snow or muddy and soft ground on which to do good trailing. No animal or human being can wander around in the woods without leaving some "sign" which the observing eye will discover. In dry weather and on stony ground the sign will be faint; nevertheless it is there. Note the dew shaken from the grass and brush in summer, or the small stones turned over or out of place, or the fresh broken twigs under foot, or the bent and twisted boughs in the bush, or the high grass trodden down. All these signs and numerous others may be discovered when there is no impression made on the ground by footfalls. A human being in the woods is sure to leave gross signs of his presence. If the warden can trail a wary wild animal, he will find it extremely easy to trail such a gross beast as man. If the man is a smoker the warden will occasionally find burned pieces of matches, or tobacco bags or cigarette papers, or the emptied contents of a pipe, and very often by some of these the true identity of the user may be traced. Other signs are also visible from time to time. Sometimes it is an empty cartridge-shell where the party has fired his gun, or the paper or wrapper

FIELD-WORK OF GAME OFFICERS

which enclosed the lunch the sportsman was carrying and left where he ate his mid-day repast, or the entrails of fish or game which have been dressed in the woods, or perhaps the party camped and then we will find plenty of signs to indicate just what occurred in that vicinity. Examine the remains of the camp-fire, the shelter and bed, and dig around the place in every direction. Perhaps an old addressed envelope may be found which will lead to immediate identification of the party, or we may find the remains of a set-line or jack-light if a pond or lake is near, or empty provision cans, papers that held food supplies, etc., etc., or innumerable other small things which will serve as circumstantial evidence in case a violation has been discovered or reported in that vicinity. All these items should be taken care of by the warden for future reference. It should be remembered that all violators aim to conceal their crimes, but usually in the backwoods they become careless about these small things, and therein lies the warden's opportunity to take advantage of just such items and outwit the offenders. A warden's whole attention is or should be engaged in discovering poachers and evidence of their work. He is keeping a sharp, constant, and attentive

GAME PROTECTION

lookout for them and always on the alert for their presence in his territory. Therefore, he has the better chance of watching them in concealment, because, as a rule, the poacher is so intent upon the business he has in hand he cannot spare much time in watching for the officer. The result is, the warden has the better chance every time if he is constantly "on his job."

To sum up then, we might say that trailing is an art acquired by experience. It becomes easier and more certain to one who is constantly studying and practising it. It consists of careful observation of details and the ability to analyze and make a connected story of the "sign" we find from place to place. No item should be too small to escape the observation, and each detail should be a link in our chain of circumstances which will form an intelligent whole. Tracking and trailing is a very necessary qualification for a warden, and he should continually study and practise it if he hopes to be successful in his work. He will make many failures at first, but this should not discourage him, but only cause him to bend his mind to renewed efforts till he masters the art. He will improve by experience and win in the end.

FIELD-WORK OF GAME OFFICERS

THE WARDEN'S GENERAL MOVEMENTS

Quite often we hear a warden complain that the regular violators in his territory keep so well posted on his general movements and plans from day to day that his success in apprehending them is thus seriously handicapped. This is true in many cases, but usually the warden is inclined to over-estimate this obstacle. It is the fate of all wardens, and the really clever ones are only stirred to increased efforts by this difficulty. Naturally enough, if a poacher knows there is but one warden in his section, and to commit an offence in safety depends upon an exact knowledge of that warden's whereabouts, he will try to ascertain that information. No set of poachers on earth can keep a clever warden's movements under observation if he is determined to baffle them, for the simple reason that the odds are all against them and in favor of the warden. It is the general policy of game commissions throughout the country to obviate this difficulty by sending strange wardens into a territory of this kind, where the local warden has complained of such a handicap to his work. This is all right in certain cases and under some conditions, such as working

GAME PROTECTION

the warden on a certain lake, pond, or stream, or in a well-known piece of woods; but for general work and without local assistance and co-operation the shrewdest warden in the country will be an utter failure. An absolute prerequisite to success is the warden's familiarity with the country in which he is working. If he can secure the services of a reliable man as a guide, he may do well in strange territory, but he must always risk his guide's being treacherous and betraying him. The reason for this is that very few men wish to betray their friends and neighbors into the hands of the law, even though the compensation for such service seems large to them. Natives of a given community are loath to act as informers against their neighbors. A warden alone in a strange country is like a fish out of water, until he gets his bearings. Sometimes he can do this by the aid of a government map and a compass, and at other times he will be compelled to go slow and make numerous inquiries before he can proceed. All things being equal, the strange warden is usually more handicapped in his work than the local warden with whom the poachers are so familiar. However, we are not opposing the policy of using strange wardens, but only attempt-

FIELD-WORK OF GAME OFFICERS

ing to show that ordinarily the fault is in the local warden himself and not in his environment, if he is in earnest about his duties and determined to perform them. The poachers may watch him, but, owing to his familiarity with the country and his acquaintance with the offenders, there are hundreds of ways by which he can outwit them. May he not let it be known that he is going to such and such a place, and then in a circuitous manner return to his old territory? Does he keep his own counsel? Then how can the poachers get any knowledge in advance of his movements? Can he not go out under cover of darkness and return in the same manner? Can he not lay a few traps for the poachers as well as they can? Can he not guard a certain section so faithfully that, even though he does not apprehend a poacher, he will prevent the commission of their crimes? And if this is true, is it not even better to prevent a crime than to apprehend the criminal? In short, there is every reason to believe that, if a warden is energetic, honest, faithful to his duties, persevering, and courageous, he will keep the poachers "a-guessing" and catch the boldest and shrewdest of them in the end in his own territory better than a strange man can do.

GAME PROTECTION

EXAMINING WITNESSES AND GETTING INFORMATION

We have called attention previously to Mr. Pinkerton's rule about securing information in the "least curious and inquisitorial manner." In a general way this refers with force to the warden's work. In most instances the work and duties of game wardens are peculiar as compared with those of other ministerial officers of a State. Sheriffs', constables', and police officers' duties usually end when they have apprehended a criminal, but that of a warden has really just commenced after the arrest is made. Then begins the trying stage for the officer. He drops his rôle of policeman of the woods, and must now assume the rôle of a prosecuting attorney. He has deprived a person of his liberty; now let him prove in a court of law that the said person has committed a crime, or by what right did he cause such a person's arrest? Herein will be shown a warden's fitness or unfitness. Whether he has used good judgment, is honest, and has a requisite knowledge of what constitutes legal evidence in a court of law, is now to be put to the test in all its glaring possibilities. He may be honest and

FIELD-WORK OF GAME OFFICERS

acting in good faith, but, if he is ignorant of his full duties before the eyes of the law, or has used poor judgment, he will be criticised and condemned. He may escape the "axe" this time, but many repetitions of such conduct will not be condoned. So we say it behooves our warden to go slow at first, and feel his way cautiously. But there is no reason on earth for an intelligent warden to hesitate if he is perfectly familiar with his duties as outlined in this chapter, and has carefully and conscientiously performed them. Let us suppose he has brought in a case on after information,—that is, he has investigated the crime after its commission and is relying on outside witnesses to convict the offender, instead of having caught him in the act. Of course, the warden may feel positively certain in his own mind that the party is guilty, but that fact should have no bearing on the matter. The question is, Can he prove his case by competent legal evidence? Mere rumors, conjectures, prejudice, and popular opinion should not interfere with a warden's judgment. Facts are what he is after, and such facts as are relevant, material, and support his contention.

Very often a warden will have charge of a case

GAME PROTECTION

where local popular opinion has already apprehended the offender, tried, and convicted him without evidence, and is insisting on the warden going ahead in accordance with this view. Here is where the officer must be firm and refuse to be swayed by clamor. Get the evidence first. Talk to every one in the locality about the case; learn what evidence is back of this public opinion, and if it is shown the warden is familiar with existing testimony and does not think it will convict the accused, he should refuse to act in spite of the pressure brought to bear upon him. On the other hand, he should be equally firm in prosecuting one against whom he has sufficient evidence, though local public opinion may have acquitted the party. Now, the question is, how can a warden decide in these cases? The first thing for him to do is to examine personally each and every witness. Don't trust this work to some one else. Don't rely upon what So-and-So has heard about the case. Go to these witnesses and examine them in person. Don't be in haste about forming your conclusions, but wait until you have heard all witnesses. Don't rush through your examinations, but conduct them carefully. Then, if you are satisfied that you have a good case, you can go

FIELD-WORK OF GAME OFFICERS

forward confidently and conscientiously, feeling that victory is on your side.

There is considerable to be learned by a warden in regard to examining witnesses, and the weight and relevancy of their testimony. This is primarily the business of a lawyer, but, as our warden must act as a prosecuting attorney, the quicker he learns this new duty the better will he be equipped for his work.

THE EQUIPMENT OF THE WARDEN

The matter of equipment to a regularly employed game warden is an item of no small importance. Usually this will be chosen to suit individual taste and needs, but there are some details in connection with these outfits that cannot be overlooked and are of considerable importance. First comes the matter of clothing. A warden must have two or three outfits of working clothes for the woods. These should be of the best material and suitable for his purposes. He needs extra suits so he can change daily into dry clothes if the weather is inclement. The warden is exposed to all sorts of weather, and it behooves him, if he values his health, to have warm and comfortable clothes in winter and light and rain-proof

GAME PROTECTION

garments in summer. His clothing should not be of the usual material worn by sportsmen, such as canvas, khaki, etc., as these are noisy in the brush and are poor articles to wear in rainy weather. Some old suits of woollen or mackinaw in winter and light cotton in summer are better.

For weapons the warden should carry the very best that can be had. He may carry them all his life and never have occasion to use them, while, on the other hand, he may need them very suddenly, and this need may be so urgent that his very life may depend upon the excellence of his gun. In the way of a small-arm we recommend the Colt's automatic pistol, calibre 45, the most powerful, accurate, convenient, and safe small-arm now on the market. This weapon is powerful enough to kill a grizzly bear and yet is small, so it can be carried on a belt and stowed away in one's hip-pocket. If the warden carries handcuffs or other police goods, he should be careful to get only the best and of modern pattern.

As a general practice it is a good thing for two wardens to travel and work in company. Occasionally there are violations committed in such remote and isolated sections of the forest that it is impossible for the officers to reach these places

FIELD-WORK OF GAME OFFICERS

from the settlements. This is more especially true with campers. They get back so far that they think they are out of the danger zone. In such cases the wardens will be compelled to camp upon the party's trail. For this purpose one can now secure a small canoe tent of balloon silk, with a ground cloth, that is light, rain-proof, and comfortable, and will roll into a small pack that can be easily carried on the back. It will accommodate two persons without crowding and make a pleasant and excellent shelter. Then a covered pack basket can be secured which will carry ample provisions and camp needs. One warden can carry the tent and bed, while the other will manage the basket. Thus equipped the two may follow on the trail of poachers who camp. The wardens can stop when their quarry does, and be right on the ground for business when the work of prevention or apprehension is necessary. In some cases this method of working has been found to be the only practicable one to insure success, and wardens should not hesitate to try it.

THE DOG AS AN ASSISTANT TO WARDENS

One of the most valuable assistants a warden can find in certain instances is a good, companion-

GAME PROTECTION

able dog. For this particular purpose each warden will be compelled to follow his own preferences. Almost any breed of dog will do, except a hound, for this animal is likely to take a trail and go off on a hunting trip of his own and leave his master to his own devices, although cases have been known wherein a hound has rendered valuable aid to the warden. Any intelligent dog is the finest companion one can have in the woods. His keen senses of sight, hearing, and smell will warn the warden of approaching dangers quicker than his own can ever do. Nothing escapes a dog's notice or attention when he is in the woods, and some breeds will fight desperately for their masters if the necessity arises. But the greatest aid the writer has found in his dog is the latter's detective ability. If we go near a camp and the remains of a deer are secreted anywhere about the place, the dog is sure to find them and dig them up. He will also find the remains of almost any other kind of game that may be hidden in the vicinity. While one is conversing with the occupants of a camp, his dog will be extremely busy searching every nook and corner for game or fish, and if there is any such about it is very certain to be brought to his master's attention by his

FIELD-WORK OF GAME OFFICERS

faithful dog, and the latter don't require any special training to render this service, either. It is his nature and instinct to do so. There is also a case where a warden's pointer dog discovered a large shipment of game birds in a box at a railway station. These birds were very cleverly secreted, but they could not escape the fine nose of the pointer, and he "made game" as soon as he drew near them, so that his master was able to seize the game and apprehend the culprits. But there are "dogs and dogs." One that runs at will in the woods as though bent on a holiday outing, making a great fuss breaking through the brush, not only betrays his master's presence, but is a detriment to his work and a nuisance; so it is presumed in choosing a dog for an assistant the warden will choose wisely, with his special needs always in view. However, on the whole, we most certainly recommend a dog for assistant game warden.

CHAPTER XI

INTERESTING PROBLEMS

SOME OF THE MANY QUESTIONS AND HANDICAPS TO BE STUDIED BY PROTECTIONISTS

Game Trespassing upon Private Property.—Owing to the great increase and spread of population in this country, the area of game land (by this we mean wild, uncultivated land) is becoming more limited every year. The game is driven from one refuge to another as civilization advances, so that from time to time we find it coming into close contact with new settlers of wild land. It is only reasonable to expect in such circumstances that the interests of the two may clash occasionally. But, as the settlements increase, the conflict becomes more acute and the cases more numerous. Here, then, the protectionist finds himself face to face with a serious problem. He desires to safeguard the game, but at the same time he is legally bound to remember that civilization takes precedence, and that the rights of man are paramount to those of wild animals. Just how to conciliate the former and harmonize the interests of both is the first problem

INTERESTING PROBLEMS

of legislators in enacting game laws. Game living close to man becomes semi-domesticated in habits. Fruit-growers, agriculturists, and stock-raisers will often discover birds and mammals encroaching upon, injuring, damaging, and destroying their property, and there is certain to be a consequent protest to the law-makers and an effort to exterminate certain species as a result. We think that in most of these cases experience has proved that they are local in their nature and can be adjusted satisfactorily to all if handled by discreet protectionists.

By consulting the reports of the appellate courts of the country, one is, indeed, surprised to find so few cases of this kind brought up for judicial determination. We do find one important case adjudicated, however, and this one has become famous as a leading case and is often cited. It is that of *Aldrich v. Wright* (53 N. H. 398), and was decided by the Supreme Judicial Court of New Hampshire in 1873. There was in that State at the time a statute in force protecting mink from May 1 to October 15. During the close season one Wells Wright discovered an old mink, accompanied by three young ones, in his goose-pond swimming after, and apparently intent upon

GAME PROTECTION

attacking his geese. Whereupon Wright shot and killed the mink. He was prosecuted and convicted. He then appealed to the Supreme Court, where it was decided that Wright's act was justified by law and that the statute did not apply to his particular case. The court held that—

The "natural, essential, and inherent right of protecting property," declared in the Bill of Rights of the Constitution of New Hampshire, is the right to do whatever, under the circumstances of each case, apparently is reasonably necessary to be done in defence; that the statute prohibiting the destruction of certain fur-bearing animals between May 1 and October 15 is not applicable to cases in which such destruction is an exercise of the constitutional right of protecting property; and that the killing of wild vermin in defence of property may be apparently reasonably necessary in apparent danger, not actual.

In delivering the opinion of the court in that case, among other things, Justice Doe said:

As the Legislature could not abolish the right, they are not presumed to have attempted an impossibility, or to have intended to pass a void act; and the statute is held valid by giving it a construction compatible with the Constitution, making it applicable only to those cases to which it can be constitutionally applied. Between May 1 and October 15, the defendant could not lawfully kill these minks for their fur, or in sport or wantonness, or for any past pursuit or disturbance of his property, however vexatious, or for any other mischief committed, however serious; but he could lawfully protect his property against them between May 1 and October 15, as well as at any other time. If they had consumed his entire stock of poultry, he could not have

INTERESTING PROBLEMS

justified his shot for obtaining their skins as the only available redress for their depredations, but, while one of his birds remained, he could lawfully defend it. He could have no indemnity for the past; but he was entitled to security for the future. Much as the statute had abridged his right of hunting and reprisal, it had put him under no obligation to suffer the minks to eat, injure, or annoy his domestic fowls. His natural, common law, and constitutional defence existed in full force and vigor, not repealed nor in the slightest degree impaired or modified by the statute. He could exercise that right as fully and freely as if the statute had not been enacted.

The wonder is there are not more cases of this kind brought before the courts. However, in many States we find provisos in the statutes protecting game, to the effect that the same shall not apply to land-owners whose property is injured or damaged by the game. These provisos tend to make it plain to property owners that the protectionists are not working adverse to their interests, but, fully acknowledging the rights of property, desire to conform to such rights. Usually such provisions assist the cause of protection, as farmers, settlers, and occupants of wild land are not prone to take advantage of their rights so palpably acknowledged, unless the damage is great or the provocation extreme.

The right to kill any trespassing animal, either wild or domestic, is fully set forth in the notes

GAME PROTECTION

to 1 Am. and Eng. Ann. Cases at page 193, where the authorities are fully cited, as follows: Every person has the right to drive away trespassing animals, and in doing so to use such force as the existing necessity may require, but no greater amount of force.

It is not denied that a person may kill an animal when necessary for the preservation of his property, but this right can be exercised only for the prevention of an injury which the trespassing animal is in the act of committing, and not to revenge an injury already perpetrated. Thus, where the trespassing animal is killed while in the act of attacking another animal, and in order to save the life of the animal attacked, the killing is justifiable. The mere fact that the animal is trespassing, however, cannot justify the killing of it. And the question as to the necessity of the killing is generally one for the jury. (Additional authorities supporting this doctrine are also given in the notes to a case in 16 Ann. Cases, at page 951.)

From all the above it is evident that the question of protecting game which trespasses upon the property of farmers, settlers, etc., is a serious one, which the protectionist of the future will be compelled from time to time to reckon with.

CHAPTER XII

THE RIGHT OF PRIVATE PROPERTY IN GAME

THE one vital and all-important legal question with reference to game yet remaining to be settled by the American courts is the defining and developing the nature of the property rights in animals *feræ naturæ* at their natural liberty which the State and individuals may possess at the same time without conflict of interests or being at cross purposes with each other. In this balance hangs the fate of private game preserves in this country. Of this there can be no doubt. The final decision one way will open the door to such preserves with the assurance of protection from the courts, while if it goes the other way there will be complete discouragement of such institutions.

As has been stated a number of times in this volume, the general rule of law, as declared by our highest courts, has been repeatedly held to be that the ownership of all animals *feræ naturæ* while at large, so far as they are capable of ownership, is in the State—not as a proprietor, but in its sovereign capacity, as the representative and

GAME PROTECTION

in trust for the benefit of all its people in common—and such animals can become the subject of private ownership so far, and only so far, as the people, acting through their representatives in the Legislature, elect to make them so. At first blush this rule appears simple and clear enough, but, when we examine the cases which have arisen for adjudication in recent years, we find the courts have experienced considerable difficulty at times in applying it. And well they may, as this ownership of the State, as a pure legal right of property, is one of the most elusive and intangible things known to our law. At times it seems incapable of exact definition or full comprehension when considered in connection with the rights which individuals may enjoy in the same subject matter. Sooner or later, however, all the courts will be called upon to solve this riddle. Some have already done so to their own satisfaction and taken a position which seems impregnable to attack, while others have not.

Now, the first important point to notice is this: That this ownership of the State is not an absolute ownership, and all agree to the common-law rule that individuals can acquire only a qualified property in game. Therefore, the question

PRIVATE PROPERTY IN GAME

naturally arises, who does possess that absolute right of ownership which is incidental to all property? The State does not have it, neither does the individual; but it must be somewhere, you say. Nothing could be clearer than the answer to this inquiry given by Chief Justice White, of the United States Supreme Court, in his opinion in the case of *Geer v. Connecticut* (161 U. S. 519). The learned justice took up the subject of the ownership of game from the earliest times known to the laws of civilized countries. He traced it through the Grecian, Roman, and Salic laws and gave an extract from the Code Napoléon, which, he said, summed up an unbroken line of law and precedent, which answers this question as follows:

There are things which belong to no one, and the use of which is common to all. Police regulations direct the manner in which they may be enjoyed. The faculty of hunting and fishing is also regulated by special laws.

This seems to be the logical solution of the problem, and there is apparently little difficulty in applying the rule in disputes between individuals; but when the State itself is a party to the litigation, then the question becomes more intricate, especially if certain questions of con-

GAME PROTECTION

stitutional limitations are involved in the inquiry, and we find some conflict in the decisions and a certain amount of confusion as a result.

In attempting to harmonize the rights in game of both the State and individuals, the courts of the States have reached different conclusions, and very few of them have attempted to analyze these rights at length. In 1904 a case involving these questions came before the Supreme Court of Arkansas. The Legislature had enacted a statute forbidding non-residents to hunt or fish in that State at any time. A man who was a non-resident, but owned a tract of land in the State, challenged this statute, on the ground that it was unconstitutional as applied to him and his right to hunt and fish upon his own land within the State. His claim was that his privilege of hunting and fishing upon his own premises was a valuable property right of itself and protected by the 14th Amendment of the Federal Constitution, and that the State Legislature could not deprive him of it. The Supreme Court sustained his contention by a divided court. As we are unable to find where this exact point has arisen in any other State court, and as the opinion of the Arkansas court is very enlightening on these questions, we

PRIVATE PROPERTY IN GAME

cannot do better than give an extract from it. The opinion of the majority was delivered by Mr. Justice McCulloch, and the case is entitled *State v. Mallory* (73 Ark. 236). Says the learned justice:

The proper solution of these questions involves an inquiry as to the ownership of game, a consideration of the nature of the property therein, whether exclusive and absolute or qualified, and the extent of the authority which the State has a lawful right to exercise in relation thereto.

It can be stated without question that, primarily, the title to game and fish is and has for all time been in the sovereign, but the nature and extent of that title and the purposes for which it is held are not altogether free from doubt. Originally the title seems to have been regarded as vested in the sovereign as a personal prerogative, but as civilization advanced it grew to be differently regarded, not as a personal right of kings, but as a portion of the common property of subjects. It is said by the Roman law, animals *feræ naturæ* were classified as common property, which, having no owner, were considered as belonging to all the citizens of the state; yet the right of an owner of land to forbid another from killing game on his property was recognized as a part of the rights of ownership of the land.

The ownership of such animals seems to have been assumed by British sovereigns, up to and including King John I, as a personal prerogative of the crown, until *Magna Charta* and the *Charter of the Forest*, by which the assertion and exercise of those rights were distinctly limited. Since then the ownership of wild animals, so far as vested in the sovereign, has been uniformly regarded as a trust for the benefit of the people, and we think that clearly, in

GAME PROTECTION

effect, the title and ownership of the sovereign has been held to be for the purpose of protection, control, and regulation. . . . Nowhere do we find in modern times that the absolute and unqualified ownership of such animals by government has been asserted and exercised further than for the purpose of controlling and regulating the taking of the same. On the other hand, we find frequent denial of the right of government to do more. . . .

We assume, therefore, as firmly established by authority, that the State's ownership of fish and game is not such a proprietary interest as will authorize a sale thereof, or the granting of special interests therein, or license to enjoy; but is solely for the purpose of regulation and preservation for the common use, and is not inconsistent with a claim of individual or special ownership by the owner of the soil, if it be found that there can be any such individual or special ownership. We next inquire whether the owner of lands in the State has any title to or property rights in the fish or game thereon?

By the common law of England the owner of land had no absolute property in animals *feræ naturæ* while at liberty in the wild state, but had a qualified interest or property in such as were found so long as they remained on his territory, and when killed or captured thereon they became his absolute property. . . .

The right of private ownership in game, so far as recognized as such at all, is of two kinds, denominated as the right or interest *ratione soli* (meaning, as the term implies, a right by reason of and growing out of the ownership of the soil) and the right or interest held by grant from the owner of the soil, called *profits à prendre*; the latter being defined to be "a right to take something out of the soil of another as a right of common, and also some minor rights, as a right to take drifted sand, or a liberty to fish, fowl, hunt, and hawk." . . .

It is insisted that these questions generally rise in suits

PRIVATE PROPERTY IN GAME

between individuals involving only individual rights, and that the recognized right to take game on one's own land and to prevent others from doing so is merely a right to prevent a trespass on the land, and not a right of property growing out of the soil. But this is not a correct estimate of the force of these authorities, for the cases all hold that it is a right inhering in the soil, and not a mere right to prevent an invasion of the possession of the owner. . . .

We, therefore, conceive it to be settled by authority and by long recognition in the law that the owner of land has a right to take fish and wild game upon his own land, which inheres to him by reason of his ownership of the soil. It is a property right, as much as any other distinct right incident to his ownership of the soil. It is not, however, an unqualified and absolute right, but is bounded by this limitation—that it must always yield to the State's ownership and title, held for the purposes of regulation and preservation for the public use. These two ownerships or rights—that is to say, the general ownership of the State for one purpose, and the qualified or limited ownership of the individual growing out of his ownership of the soil—are entirely consistent with each other and in no wise conflict.

The transitory nature of the property renders the benefit so diffusive that all may join in the enjoyment thereof, and for that reason the sovereign holds as the representative of the public, so as to regulate and protect the common use. Still, the right of the land-owner to fish and hunt on his own lands is to that extent a special property right, though subordinate to the other. . . .

Does the curtailment of this right fall within the prohibition of the Fourteenth Amendment? A complete answer to the inquiry is made in the affirmative when the conclusion is reached that the right denied is a property right. Non-resident land-owners may be called upon to share the public burdens, and property rights in some

GAME PROTECTION

instances must yield to the public demands; but the burden must rest equally upon all, and no discrimination in that respect be made against non-residents as such.

Although in the above case Chief Justice Hill delivered a strong dissenting opinion, in which he was joined by one of the other associate justices, yet there is this to be said about the decision. In those States (as was said in the opinion to be true of Arkansas) where it is held that the English common-law doctrine still prevails, to the effect that a land-owner has a qualified property in game found at large on his land by reason of his ownership of the soil, the conclusion of law reached by the Arkansas court is unquestionably sound, for that property is such as is protected in those jurisdictions by the Fourteenth Amendment of the Federal Constitution. But in other States, and they seem to be in the great majority, no such doctrine is acknowledged. On the contrary, it has been repeatedly repudiated by these latter States, and they have been sustained in this view by the Supreme Court of the United States. The settled rule of law in these other States is well put by the highest court of Illinois in this way: "To hunt and kill game is a boon or privilege granted, either expressly or

PRIVATE PROPERTY IN GAME

impliedly, by the sovereign authority—not a right inhering in each individual; and, consequently, nothing is taken away from an individual when he is denied the privilege at stated seasons of hunting and fishing.” (*Magner v. People*, 97 Ill. 333.) And the Court of Appeals of New York puts the property theory at rest in these brief words: “Laws passed for this purpose (to protect game) do not interfere with private property, for there is no property in living wild animals, and only as the law permits their capture is there property in wild animals after they are caught and killed.” (*People v. Bootman*, 180 N. Y. 1.) In jurisdictions where this latter American principle is maintained, such a decision as that rendered in the Arkansas case above cited would be palpably unsound. So the question reverts to that asked at the beginning of this chapter: Which view is to predominate and finally triumph in the United States?

While we may thus have trouble in applying the rule of law in questions between the State and individuals, that difficulty largely disappears in disputes of the same character between individuals.

This inquiry is frequently heard: If two

GAME PROTECTION

sportsmen are in company on a hunt and both see and shoot the same deer, moose, bear, fox, etc., and neither knows whose bullet killed the animal, to whom does it belong? The general rule of law in such cases is that it belongs to the one who first secured control or possession of the game. Of course, this answer is predicated upon the supposition that the game was taken and secured during the lawful open season and by the means and in the manner permitted by the game laws of the State in which it was taken, for, otherwise, neither party obtained any property right in the prize and it would be forfeited to the State.

This question has come before the courts on several occasions, and it has been held that mere pursuit of a wild animal does not give the pursuer any property in it, and, therefore, no action lies against a person for killing and taking a fox which was pursued by and in view of the hunter who found, started, and pursued it, and was on the point of seizing it when killed by such other person. (*Pierson v. Post*, 3 Caines, 175.)

So a hunter who pursues a deer and wounds it, and follows its track by its blood until night, when he abandons the pursuit for the night, but resumes it in the morning, has no title to it as against

PRIVATE PROPERTY IN GAME

one who killed it the night before. (*Buster v. Newkirk*, 20 Johns. 75.)

So, where a person is engaged in fishing and has nearly encompassed a quantity of fish with his net, and a third person, by rowing his boat and splashing the water about, frightens the fish so that they escape, no title is acquired to the fish, and no action lies against the wrong-doer for the value of the fish on the ground that they belong to the owner of the net or that they were in his possession. (*Young v. Hichens*, 6 Ad. & E. (N. S.) 606.)

Actual bodily seizure is not indispensable to acquire right to or possession of wild animals; the mortal wounding of such beasts, by one not abandoning his pursuit, may, with the utmost propriety, be deemed possession of him, since thereby the pursuer manifests an unequivocal intention of appropriating the animal to his individual use, has deprived him of his natural liberty, and brought him within his certain control. So, also, encompassing and securing such animals with nets and toils, or otherwise intercepting them in such a manner as to deprive them of their natural liberty and render escape impossible, may justly be deemed to give possession of them to those persons

GAME PROTECTION

who have used such means of apprehending them. (Tompkins, J., in *Pierson v. Post*, 3 Caines, 175.)

What is known as the American "custom of the chase" is this: Where a hunter starts and captures game upon the land of another, the game so taken belongs to the captor, even though the capture is effected by a trespass upon another's land. This is contrary to the English rule of law and corresponds more nearly to the ancient civil law of the Romans. Many of the American courts recognize the rule, however, and it has, therefore, been termed "the American rule." In some States it is the law that if a hunter starts game upon the land of another and kills it upon such land, it belongs to the owner of such land; but, if a person starts game on the land of another and pursues it on to the land of a third person and there captures it, it belongs to the captor. This later rule and the one termed "the American rule" turn upon the principle that the game belongs to all in common, and, whereas one may be liable to a land-owner for trespassing upon his premises in pursuit of game, yet the latter has no property rights in the game which have been invaded, but only in his freehold.

The common-law rule is that every owner of

PRIVATE PROPERTY IN GAME

land has the sole and exclusive right to hunt and fish and kill game which may be found at large upon his premises, and, as soon as this right is exercised, the game so killed or captured becomes his absolute property; subject, however, to the superior right of the State to regulate the manner in which he shall dispose of same after its capture and taking.

Concluding this chapter, the author desires to call attention to a singular fact—whether humorous or pathetic, it is difficult to say. In theory, of course, the game belongs to all the people in common. Naturally, the common man feels, from studying this fine legal doctrine, that he has some rights in regard to it. But has he indeed? In practice how does this fine theory work out? Let us see. The sovereign rights of ownership have been taken advantage of in some States to enact regulations so numerous, technical, and restrictive as to make it almost impossible for a person to take up his rod or gun and leave his own doorway without at the same time violating some statute. This is, indeed, provoking enough to one who desires a day's recreation in the woods or upon the streams. For the benefit of the public welfare and the preservation of the wild life, a

GAME PROTECTION

good citizen will tolerate all this with equanimity; but when he must also run counter to the rules of law regarding private rights and trespassing, he scarcely knows how to contemplate the situation with fortitude. Aside from a few State and national parks and forest reserves, nearly every foot of wild, waste land in America is held in private ownership, so that, when the common man goes afield for a day's outing to refresh his overworked mind and body, no matter whither he turns he is very apt to be a technical trespasser or worse. Posted signs forbidding his entrance on good hunting and fishing ground confront him in every direction. The courts are punctilious in protecting private rights, and the State officers must, of course, be vigilant in enforcing the game laws, so just where does this common man come in, anyway?

CHAPTER XIII

PRIVATE GAME PRESERVES IN AMERICA

THE subject of private game preserves is one demanding the thoughtful consideration of every sportsman in this country to-day. The large increase in the number of these establishments within the past few years, coincident with a corresponding decrease in the supply of game available for public hunting, has served to focus the attention of the nation upon them. Now, in discussing private preserves we should not include fur-bearing and other so-called animal farms, nor game-bird aviaries, nor refuges for insectivorous birds, for all of these are of more or less public benefit. We refer rather to those large tracts of wild land and shore marshes, owned by wealthy sportsmen, and where they and their friends enjoy the sport of shooting, to the absolute exclusion of the general public.

Those who are interested for the public welfare in the conservation of our rapidly disappearing wild life look upon the advent of these institutions with considerable suspicion. Formerly many

GAME PROTECTION

thought such preserves a good thing, as their natural tendency is to save the game. Others, who took a long look into the future, came to a different conclusion. The latter saw in the growing number of these establishments a real menace to the cause of game protection as a governmental system, now fully recognized in this country. In the meantime a number of sportsmen who had visited abroad in Great Britain and on the continent of Europe, and there witnessed the abundance of game on private preserves, came home enthusiastic, and imparted to their brethren the startling news that the true remedy for game extermination had been discovered at last. Right at this point, however, it might be well to inquire of such enthusiasts whether they have considered the fact that there is a vast difference in the European and American ideas upon this subject. Let us see, then, just what that difference is, and, should we find that the systems are based upon different fundamental principles, the question is pertinent: Do we want the European idea in this country?

The theory of protection all over Europe is based on practically the same principles, and amounts in effect to this: Protect and encourage

GAME PRESERVES IN AMERICA

by law any person who has sufficient wealth and inclination to propagate game and make it plentiful, and see to the interests of the public afterward. But let us examine the English systems alone, as its admirers in this country are constantly praising that system and urging its adoption here.

The doctrine prevailed there from earliest times that all game was the absolute property of the sovereign, and no one could hunt or take it without royal permission—a royal grant or franchise, as it was called in law. After the accession of William the Conqueror, of Normandy, who parcelled out all the land in the kingdom to his retainers and established the feudal system, hunting and fishing were privileges enjoyed exclusively by royalty and a few favored noblemen. This condition continued many years and was a scourge to the country with its odious forest laws. Finally, the united aristocracy of the country arose in revolt, and forced their king to acknowledge a new doctrine which provided that the game was held in trust by the sovereign for the benefit of all his subjects. Having received this concession from the crown, the noblemen, who owned nearly every foot of land in the kingdom and had ample

GAME PROTECTION

leisure time for sport, set about to secure this new privilege of hunting solely to themselves. By law they knew that their right to forbid trespassing upon their land would accomplish this purpose. So they wholly excluded the public from hunting on their premises, engaged keepers to protect their rights, and propagated game upon their immense estates in large quantities. Thus originated the private game preserve. This condition of affairs added a new word to the English vocabulary—"poaching." The working class of people, finding themselves totally deprived of the inestimable privilege of hunting lawfully anywhere in the kingdom, went in pursuit of game anyway—contrary to law—and trespassed upon the private preserves. This was called "poaching," and it so aroused the ire of the preserve owners that they had laws enacted, the harshness of whose provisions and penalties fairly makes us shudder to-day. Hundreds, and even thousands, left England to escape the penalties of the game laws. We will not attempt to go into these laws in detail, but a single example will give a fair idea of their character. It seems the poachers would often paint or blacken their faces to escape identification, and thus arrayed would steal out at night and

GAME PRESERVES IN AMERICA

kill game on the preserves. This offence was thereupon made a felony at law and punished with torture and death. Think of it! Men were hanged and quartered for killing a single rabbit on private preserves! Now, those laws in a modified form survive in England to-day. The principle of law still obtains there that only land-owners have the inherent right to hunt and fish, and the only way to preserve the game is to protect and broaden the rights of this class of citizens. And yet the advocates of private preserves are constantly informing us what a good thing these institutions will be for this country. We admit that there is a modicum of truth in their statement as to the abundance of game in England, but we must bear in mind that it benefits only the few—the preserve owners—while the people generally have almost no free hunting grounds anywhere and consequently take little interest in the subject of game protection.

In this country, on the other hand, every sportsman, rich or poor, is interested in and benefited by such protection. Here we acknowledge only one principle for espousing the cause of game conservation. We all unite on one view and bend our energies to accomplish one purpose,—to preserve

GAME PROTECTION

the game for the common benefit and enjoyment of all classes. So let it be remembered, in discussing this question, that in Europe this principle does not obtain recognition. The time when game was preserved there for the sake of insuring free hunting to all the people has long since passed. Most of the laws are enacted to protect the preserve owner, and practical protection of the game is left to the latter's individual discretion. We cannot acknowledge any such principle in this country. On the contrary, our game protectionists are laboring dilligently to prevent this European idea from obtaining a foothold here.

Here the doctrine is fully recognized that game at liberty is the common property of the people of the State where found; that its taking is to be regulated by law, and that an individual can acquire only such a qualified property therein as the people choose to give him through laws made by their representatives in the Legislature. What is really causing some confusion upon this question, however, is this: By the common law of England it was recognized that a person had a special property in game found upon his land, *ratione soli*,—that is, by reason of his ownership of the soil. Then again, incident to ownership of land, there

GAME PRESERVES IN AMERICA

was a right known at law as *profit à prendre*,—that is, a person who owned land had a right to grant or sell the privilege of taking from the same, crops, produce, timber, fish, and game, and the privilege of hunting and fishing on such land, without parting with his title to the land itself. So the great question which our American courts are now facing and must soon definitely decide is: Are we fully to recognize these special rights here, and are such rights in game to be deemed superior to the State's right to say just what, if *any*, right of property in game it will grant to the individual? Upon the final settlement of this vexed point depends the future of private game preserves in the United States. If it is held that these private rights in game must give way to the State's superior right of property in the same, then the private preserves will be under the absolute control of the Legislatures. The latter may say to the preserve owners: "Unless you are willing to permit the public to hunt over your wild land for game at liberty there, we will forbid all killing and capturing of game upon your premises. Inasmuch as we cannot compel you to allow trespassing on your land, yet we *do* own the game there, and if you do not permit us to come on your land

GAME PROTECTION

hunting for our own property then we will not permit you to hunt and kill it either."

Now, on the other hand, should the courts finally decide that these special rights of land-owners in game are valuable property rights, distinct, independent of, and separate from, and not inconsistent with, the superior title to game held by the State, then such rights would be fully protected by the national Constitution and the State would be powerless to enact such a measure as above. *Then* let us see what would occur.

Undoubtedly private preserves would spring up and thrive all over the country. And as the game grows scarcer from year to year the incentive for wealthy sportsmen to establish such institutions for their own exclusive enjoyment grows stronger. Each new preserve limits and restricts the area of public hunting grounds. Following this process to its logical conclusion, and judging the future by the past, it is inevitable that in course of time free hunting and fishing in America will be only a memory, and the next generation will find themselves in exactly the same position as the proletariat of Europe finds himself to-day—entirely shorn of his free hunting territory.

GAME PRESERVES IN AMERICA

Now, taking, as we do, the foregoing view of the situation, we are unalterably opposed to the establishment of large private game preserves in this country. We consider them false institutions in this land of liberty and justice, and we believe they will meet with fierce resistance before they ever become recognized as a part of our American sportsman's life. We are also opposed to them upon principle, for they do not obtain their privilege of exclusiveness fairly. It occurs primarily by means of a land-owner's right to forbid trespassing upon his realty. And when he forbids trespassing upon wild, waste land, where the hunter can hardly do more than nominal damage, he deprives the people, without just cause, of their equal right to property which is owned by all in common. Is that commensurate with our American standard of justice? Certainly not. In some States—notably Vermont—the fathers attempted to insure the right of free hunting and fishing to their descendants by incorporating a provision in their Constitutions to that effect. These worthy forebears well knew what havoc to the people's liberties the private preserves had wrought in the mother country, and they did not propose to have such obnoxious in-

GAME PROTECTION

stitutions transplanted to these shores if they could prevent it.

To any one who questions the opposition to private preserves and considers such a course narrow and provincial, we answer and say, take the issue home, put yourself in the place of some of the sportsmen who have had sad experiences with these institutions, and then give us your views. Instead of being a wealthy preserve owner yourself, or the intimate of such a person and enjoying his bounty, let us suppose, rather, that you are one of the great army of sportsmen in the ranks, and thoroughly fond of such fishing and hunting as you may find near home. And suppose you live in the country or a small town, and have so lived from childhood. In your neighborhood, let us say, there is a fine piece of hunting or fishing territory. You know every foot of this ground, for you have travelled over it for years and are familiar with every game-cover and trout-pool on the place. When you have your annual vacation, or on any other suitable occasion, you are fond of enjoying your favorite recreation there. Not only you but all your friends and neighbors have done likewise, and your ancestors hunted that territory before your day. In fact,

GAME PRESERVES IN AMERICA

from time out of mind this has always been the only great free hunting ground within the comfortable reach of your time and purse. Suddenly some wealthy man takes a fancy to your game on these grounds, buys up the land, posts notices forbidding trespassing thereon, and stations guards upon the place to keep you out and prevent you from enjoying the common property of all. What would you say to this? Would you think it consistent with justice? Would you favor game protection thereafter if you were informed that the laws of your State upheld and encouraged such institutions? Or, rather, would you not be in a fighting mood and quickly align yourself with the opposition?

And yet, for all this, we hear many worthy Americans advocating the establishment of these preserves in this country. Have they wholly forgotten the lesson of history? Do they desire to foist the European system of game protection upon us? Or is it their wish to stir up all the class hatred they can in this country? No, indeed, they will tell you; what they desire is more game and less law. More game for whom? Private preserves cannot possibly bring more game for the public. They will only increase game for the few

GAME PROTECTION

at the expense of the many. Ah, but these friends reply, the preserve owners will breed and propagate game upon their premises and the public will have the benefit of the overflow. Granting this is true, for the sake of argument, but how about the game belonging to the public which finds refuge on the preserves? Does not this item counterbalance all that the preserve owner returns to the public? And you will also notice that the preserve does not propose that there shall be much of an overflow.

The real answer to this argument is: Granting that the preserve increases the supply of game, then let the State own the preserves. Give us State refuges, State parks, and game farms owned by the State. Let breeding and propagation of game and fish be conducted on State land and under the supervision of official game commissions for the benefit of all the people of the State. Let a portion of the money turned in annually by thousands of sportsmen for hunting licenses be set aside and expended in purchasing game refuges and State parks. In this way the future supply of game will be assured forever. Look at New York with its immense State Park in the Adirondacks. Would the people of that State now be

GAME PRESERVES IN AMERICA

willing to dispose of those holdings or turn them over for the exploitation of private interests? And when the State is buying up these waste lands from time to time, if it should be found that the preserve owners had possession of all the most available game land and refused to part with it, they can be forced to do so by the legal process of eminent domain. Nor is this advocating the creed of State socialism, for the right of eminent domain has always existed in the States, and the people may resort to it at any time when it becomes necessary to do so for the public good.

If the growing fad of private preserves continues to spread in this country, and in the mean time the public generally is not sufficiently aroused to the necessity of saving and conserving our present supply of game, it seems certain that in the not distant future there will be a serious clash between the preserve owners and the great army of sportsmen on the outside. What will be the outcome of such a conflict? No one can doubt that the people will ultimately win when once aroused, but it seems that this clash may be safely averted by resorting to the means above set forth.

We are fully aware of the fact that the above view of the outlook for private game preserves

GAME PROTECTION

in this country is not shared by some of our leading protectionists, but we cannot agree with the latter. So capable a man as Dr. T. S. Palmer, of the U. S. Biological Survey, sees plainly that there is to a certain extent some danger in large preserves, but still he thinks that all abuses may be remedied and the preserves be a good thing for the country and the cause of game preservation. In giving his views of the outlook for the future of these institutions, Dr. Palmer says :

Whatever may be the feeling in regard to private preserves, they evidently constitute a very important factor in modern game protection, and, as the country becomes more thickly settled, may become one of the chief means of preserving game for future generations. It is true that abuses have crept in, that occasionally the object of preserves has been perverted, that preserves have been established without due regard to the interests of the public, and that they have sometimes been used rather as a means of destroying than preserving game; but such abuses are exceptional and in no way militate against the general idea of establishing refuges where game may be propagated naturally or artificially and maintained safe from attack. Where such abuses exist, they should be corrected by regulation and should not be allowed to lead to general condemnation of the preserve system. In a country like the United States, where so much of the land commands high prices for agricultural purposes, the area devoted to game preserves will probably never be large enough to form an appreciable proportion of the total area, as is the case in Scotland, and to some extent in the Province of Quebec. If, how-

GAME PRESERVES IN AMERICA

ever, in any State too much land is likely to be occupied by private preserves or if too much of the game is controlled by a few persons, the remedy lies in licensing the preserve, limiting its size, or increasing the taxes to a point where holding large areas becomes unprofitable. It may even be necessary to subject such property to State supervision, by requiring reports of the amount of game liberated or killed, by regulating methods of hunting or limiting the amount of game that may be killed, by requiring certain definite work in the way of game propagation, and by providing that access be given to duly authorized officers at all reasonable times. Certainly the owner will prefer some such regulations to the present unreasonable attacks on the preserve, or the expense of maintaining his rights by a guerrilla warfare with poachers or by constant litigation in the courts. On the other hand, that element of the general public which is simply opposed to the use of land for preserves, and which holds that land-owners in attracting to their own lands game belonging to the State are appropriating public property, will accept such regulation as evidence that the preserve is maintained for public as well as private benefit.

CHAPTER XIV

RESTOCKING GAME COVERS

WITHIN the last few years the sportsmen of the country seem to have become impregnated with the germ of importing foreign game birds to restock their covers. Like all American ideas and customs, when once it attains the dimensions of a fad, everybody must have it, and our people appear to be moving in feverish haste to adopt it—without either personal investigation or careful examination of its merits. Simply because the introduction of ring-necked pheasants in the Willamette Valley, Oregon, proved an unexpected success, some people thought this same bird would do well at any place in the country. In making these extensive importations the history of past experiences is evidently totally ignored or forgotten. Of course, it is a good sign of the times that the great army of sportsmen are desirous of more game. This, at least, is evidence that they are according the subject some consideration and conceding the rapid decrease in our native game. In fact, they are beginning to realize thoroughly,

RESTOCKING GAME COVERS

that, if some heroic measures are not taken, the sport of shooting in this country will soon be only a memory.

Perhaps, after a large number of experiments have been tried, with the coveted result wanting, experience may prove a valuable—though expensive—teacher. From time to time both birds and mammals of various foreign varieties have been introduced into our fields and covers with varying success. It is safe to say, however, that about nine out of ten of these cases have been failures and immense sums have been invested in them. No one objects to such attempts—even where they are foreordained failures—if we can be assured that the exotic species which is introduced does not drive out, destroy, interfere with, or otherwise hasten the extermination of the remnants of our native game. But are we prepared at present to assert that this is not a fact? If this result does follow (and all cases should be carefully watched), it will then be the immediate duty of the Federal Government to prohibit the importation of that particular species, and of the States to forbid the stocking of their covers with the same.

More recently the attempts at restocking have

GAME PROTECTION

been confined largely to the Hungarian partridge, so that now there is considerable rivalry between the above bird and the ring-necked pheasant for first place in the esteem of the American sportsman. The records of importations show that from July, 1900 to December, 1909, nearly 49,000 European or Hungarian partridges were ordered from foreign dealers. The fate of many of these birds is problematic. In some States they are reported as doing well, while in others the experiment has been discouraging, which is not to be marvelled at when we consider the diversified climatic conditions in this country. All sorts of exotic species of birds have been introduced in America, including, besides the popular Hungarian partridge and the ring-necked pheasant, black game, capercailzie, sand grouse, various kinds of pheasants, European quail, and the French partridge. Most of the first birds introduced have disappeared altogether. What an enormous sum of money must have been thus wasted! If this money had been all used in a practical, economic, and intelligent manner in protecting our native game, undoubtedly there would be no necessity for such experiments. If wholesome laws had been enacted, competent wardens

RESTOCKING GAME COVERS

employed on a salary and civil service basis and kept continually in the field, enforcing the laws rigidly, destroying vermin, and assisting in protecting the forests from fire, the present-day vanishing process of our native game would have been prevented. The difficulty with the American sportsman seems to be that he is in such great haste for amelioration of present conditions that he is unwilling to wait a single season and give the laws and Nature an opportunity to do their work. Another thing is, owing to lack of proper enforcement, an effective law very seldom is given a fair chance to see what can be accomplished by it. It has been repeatedly demonstrated that a law is of no value on the statute book until it is given a thorough enforcement in the field, after which, sufficient time should be allowed to observe its effect upon the game it aims to protect. A few statutes well enforced often accomplish more than a full book of laws which have become obsolete from non-enforcement.

There is considerable diversity of opinion respecting the success of introducing Hungarian partridges and other exotic species of game birds into the covers of this country, but the author prefers to pin his faith to the conclusions of Mr.

GAME PROTECTION

Henry Oldys, of the Biological Survey, upon the subject, as Mr. Oldys is both an impartial and authoritative critic in such cases. He has given the matter his personal attention and much study, and has issued a bulletin from his department covering the ground thoroughly. He says:

While most of the reports received of these colonization experiments with the Hungarian partridge are favorable, persons interested should not be too sanguine of ultimate success. Similarly favorable accounts were received after the attempted acclimatization of the migratory quail of Europe and of English and Asiatic pheasants. In fact, the general rule in all such experiments is unexpected success at the outset, followed sooner or later by equally unexpected failure. After multiplying with surprising rapidity, the subjects of such experiments usually disappear with corresponding rapidity.

Not only is acclimatization of an exotic species difficult, but it may, if successful, lead to unexpected results. Birds and mammals often disclose new traits on colonization in a strange land. Thus, the skylark, chaffinch, yellow-hammer, blackbird, linnet, and other small songsters of Europe, which are more or less innocuous in their native land, became such pests when transplanted to New Zealand that they receive regular consideration in agricultural reports under the head of "The small bird nuisance." It is possible that successful acclimatization of European game birds might be followed by changes of characteristics that would lower their value as objects of sport and perhaps render them objectionable to agriculturists.

The possible effect upon native game birds of the successful introduction of the partridge should also receive careful consideration. The partridge is pugnacious at breeding

RESTOCKING GAME COVERS

time, and, while there is small probability of its killing our native birds by direct assault, its presence may create a struggle for nesting places that will prove serious, at least to the bobwhite.

The experiment has already been a costly one. At \$6 a pair (a low average price) the birds brought in have cost \$150,000, an amount with which much might have been accomplished had it been applied to the restoration and protection of our native game birds. American birds are already adapted to American conditions, and their value is well proved. They hold a place in the estimation of the sportsman that cannot be rivalled by any introduced bird, and the farmer appreciates the important service they render as destroyers of insects, in which the bobwhite particularly is almost unequalled. The Hungarian partridge may never satisfactorily adapt itself to conditions in this country, or it may develop objectionable traits. Hence, it would seem wise to devote less energy and money to the establishment of this and other exotic species and give more attention to the restoration and maintenance of our native game birds.

While it thus appears that the restocking of game covers with various exotic species of birds is more or less of an experiment of doubtful value to this country, yet it does not follow that the efforts to propagate game birds and mammals should cease. On the contrary, it is now admitted that renewed and more extended work should be undertaken in that direction on tried and certain lines.

As remarked by Mr. Oldys, and as a matter of

GAME PROTECTION

common-sense and national and local pride, we should first exhaust every possible effort in an attempt to rehabilitate our own splendid native game before indulging in doubtful experiments with any sort of foreign species. That many species of our native game can be propagated in captivity is now an assured fact. Naturally enough, though, this requires both patience and intelligence to carry on the work properly. Common-sense should dictate that the bobwhite quail cannot be successfully transplanted from the Southern and Southwestern States into our cold Northern States with any degree of early and marked benefits. Where the bobwhite was once abundant and the physical conditions of the country not much changed, if native birds are trapped and reared in captivity, there is every hope of profit in the final result. Like common-sense methods should govern in the propagation of any other species of game.

Prof. C. F. Hodge, of Clark University, Massachusetts, and other scientists have fully demonstrated the feasibility of propagating America's greatest game bird—the ruffed grouse—in captivity. The efforts of others have proved that the bobwhite quail, and prairie hen, together with the

RESTOCKING GAME COVERS

wild turkey, can also be "hand-raised" when proper precautions are taken and the work placed in charge of competent hands. Also, it is no secret that wild ducks and wild geese can be propagated successfully in two ways,—either by simply permitting Nature to work out her own methods undisturbed in attractive places of refuge for the birds, or else hand-raised by placing the eggs under barn-yard and domestic fowls. In sections where hares and rabbits will not become pests to farmers and orchardists, no difficulty is experienced in rearing these little animals at a good profit for market purposes or for restocking depleted covers. Deer and elk may be propagated at slight expense, after the first cost of procuring breeding stock, on waste land not useful for cultivation; and mink, fox, and skunk farming are now commanding attention in some quarters to supply the demand of the fur trade.

That all this may be accomplished without great waste of funds in experiments, has been definitely ascertained within the last decade upon numbers of well-established State and private game farms where the work has been systematically conducted. It would be manifestly impossible, however, in a volume of this character to give a full

GAME PROTECTION

account of this propagation work, as each line would require a complete book in itself to describe all details, so we must content ourselves by noting results attained and in giving a few opinions of government experts who have investigated each subject.

Let us, then, take the testimony of a few reliable experts who are always conservative in their estimates and whose word is worthy of belief in every particular. In reference to propagating various species of grouse, Mr. Sylvester D. Judd, of the Biological Survey, says :

In view of the decrease of both bobwhites and prairie hens, it is important to know that there is every probability that proper efforts to rear these birds for restocking purposes will be successful. . . . The numbers of bobwhite may be readily increased by careful protection. The restocking of suitable places in the former range of the prairie hen, and even in the former range of the heath hen in the coast region of Virginia and Maryland, appears to be quite practicable. The significance of an experiment made by Audubon many years ago at Henderson, Ky., is of special interest in this connection. In the fall he secured 60 prairie hens and, clipping their wings, turned them loose in his garden and orchard, which contained about four acres. The birds quickly became tame and walked about the garden like so many tame fowls, mingling occasionally with the domestic poultry. The importance of the prairie hen as a destroyer of weeds and insects has been demonstrated, and its value as a food and game bird

RESTOCKING GAME COVERS

is well known. As the bird possesses such good qualities and as proper efforts for its reintroduction into parts of its former range will almost certainly be successful, it is hoped that the undertaking will not be long delayed.

And nothing can be finer and more impressive than this appeal of Mr. Judd's for the protection and propagation of the bobwhite quail. Says he:

Bobwhite is prolific. A pair of birds under favorable conditions will raise a dozen young in the season. Then, too, it is long-lived, for a bird kept in captivity is known to have reached the age of nine years. The outlook for the future of the species is most satisfactory, provided it is given even a small amount of care, with proper legal protection. The Audubon societies, with a membership of 65,000 to 70,000, which cherish the bobwhite for æsthetic and humanitarian reasons, the sportsman, who loves the whirr of its brown wings, and the farmer, whose enemies it destroys and whose resources it increases, can do much to favor the bird in its natural environment and to protect it by adequate and effectively enforced laws.

As to raising deer and other large game mammals, Mr. David E. Lantz, of the Biological Survey, sums up the matter in this way:

The Rocky Mountain elk and the Virginia deer can be reared successfully and cheaply under different conditions in regard to food and climate, as has been proved by many successful experiments. The complete domestication of either species is a possibility which, if realized, would be a source of lasting benefit to the world. With proper encouragement, the production of venison from both elk and deer can be made profitable industries on lands unsuited

GAME PROTECTION

for cattle, horses, or sheep. The rearing of both species for stocking parks and game preserves would for a time be even more profitable than the production of venison. . . . It is believed that with proper encouragement much of the otherwise waste land in the United States may be made to yield profitable returns from the production of venison, and that this excellent and nutritious meat, instead of being denied to 99 per cent. of the population of the country, may become as common and as cheap in our markets as mutton.

On the question of propagating fur-bearing animals, Mr. Wilfred H. Osgood, of the Biological Survey, has this to say:

The growing and world-wide demand for furs of high quality can be met only by increasing the number of the animals producing them. This at once suggests that fur-bearers may be propagated in confinement, and that by this means an important industry may be developed. The idea is not new, for the domestication of fur-bearing animals has been the subject of considerable thought and experiment in the past. Most of the early enterprises were devoted to the smaller and less valuable animals, as skunks and minks, and seldom advanced beyond the theoretical or experimental stages; but results of considerable importance have been recently obtained with the blue fox in Alaska and with the silver fox in eastern North America.

Writing to the New Jersey Game Commission on the subject of State game farms and rearing places, Mr. Charles E. Brewster, of the Biological Survey, thus sums up the whole question to date:

Too much cannot be said in favor of the establishment of State farms for the breeding of desirable game animals

RESTOCKING GAME COVERS

and birds for liberation. Many of the States are now expending more money in this work than is spent even in warden service, and, while the wisdom of neglecting our splendid game birds, like the pinnated and ruffed grouse and bobwhite quail, in favor of the more showy pheasants and other imported birds, may well be doubted, careful experiments intelligently conducted will easily demonstrate what birds will best survive local conditions after liberation. Deer farms are receiving considerable attention throughout the country, and it has been shown in numerous instances that they can be successfully raised within enclosures at about the average cost of sheep. . . . At Lee Summit, Missouri, a gentleman is annually raising more deer for the market than were last year killed by the hunters of New Jersey. Breeding animals may be purchased from the Cleveland Cliffs Iron Company at from \$20 to \$30 each. . . . If does and fawns were given protection at all times, and the increase from a few deer kept in captivity liberated at about a year old, it would continue to insure splendid sport to the sportsmen of the State. The law should be changed, and dogs should be kept out of the woods frequented by deer at all seasons of the year.

A number of States have within the past few years devoted considerable attention to the breeding of native game birds, and have shown the entire feasibility of stocking depleted covers by this method. Of these several are successfully raising the bobwhite quail in captivity. . . . The State of California is taking up the breeding of wild turkeys and some of the other native game birds. If a sufficient number of stock birds can be obtained, your State could very profitably establish a farm for the raising of quail, ruffed grouse, pinnated grouse, and other native birds, and one for pheasants and other foreign species. Recent experiments in Michigan with the Hungarian partridge have been very satisfactory, and the birds seem to survive the severe winters of that State even better than the native bobwhite quail.

CHAPTER XV

PROPAGATION OF GAME FISH

BEFORE game fish can be successfully propagated in our forest waters, and the supply sufficiently augmented to meet the increasing demand of the present great and growing army of sportsmen throughout the country, the protectionists will be compelled to bend every effort toward the attainment of four necessary conditions precedent to success. These are (1) preservation of the forests, (2) freedom of the waters from pollution, (3) proper planting of stock fish, (4) the enactment and enforcement of statutes to protect the young fish until they have had an opportunity to reproduce their kind, to prevent wasteful methods of catching the fish, and to limit the amount taken by each fisherman.

As to the first condition, in the absence of scientific and binding forestry laws in this country, the protectionists can do little more than study lumbering operations by proper forestry methods and lend their aid toward the enactment of legislation affecting the same. They can, how-

PROPAGATION OF GAME FISH

ever, exert a wide influence in the prevention of forest fires which annually attack our wild lands. This latter subject is treated in another place in this book. Almost all well-informed game protectionists understand the value of the forests in the propagation of both fish and game. To those who do not, we may say that, as for fish, the forests conserve streams by regulating their flow. Full knowledge of the effect of the forests upon the quantity of water carried by the streams has not yet been definitely ascertained, but we do know of the effect of the forests upon the regularity of the stream flow, which is the most important element in fish propagation. A part of the falling rain or snow is checked by the tree tops and returned to the air by evaporation. But this evaporation is wholly or nearly compensated for by the smaller evaporation from the soil under the forest cover than from the soil in the open. The forest soil gives up water to the air more slowly than either brush land, meadow land, or cultivated fields. The observations of scientists have fully shown that forests powerfully affect the manner in which water reaches the streams and passes down them. The forest floor is a blanket, and like a blanket it will hold more water

GAME PROTECTION

than will the harder and less porous soil of the open. A saturated forest soil will hold more than half its dry weight in water, or over 6 inches of water for every foot of soil. This, as well as the breaking up of forest soil by the roots of trees and undergrowth, makes it more effective than any other cover for the intake of water into that vast underground reservoir from which all streams and springs are fed. When a forest is cleared from a mountain water-shed, the blanket formed by the decaying leaves, branches, and fallen trees is burned up, dried by the sun, or carried off by wind and water. This is inevitably followed by increase in the frequency and duration of floods.

That the existence of nearly all kinds of game depends directly upon the conservation of the forests is well known. The deer killed in six States alone in the northeast represents each year a food value of over \$1,000,000. The raw furs exported yearly from the United States are worth \$7,000,000 to \$8,000,000, and raw furs worth in the aggregate still more are kept for manufacture at home. Most of these furs are taken from forest animals. Relatively few kinds of fresh-water fish, and mainly those of inferior food

PROPAGATION OF GAME FISH

value, will endure in streams fed from denuded water-sheds.

Of the second condition to successful propagation of fish, it is also a matter of almost universal knowledge that such operations cannot be conducted in water polluted by mill waste and sewage, and the remedy for this evil has been noticed under the appropriate heading.

Regarding the third condition, we may well say, with Fred Mather, that "A man may be a very learned man and yet not know how to plant trout fry." It is not the office of this work to enter into detail as to the proper method of planting the various kinds of game fish, but it is necessary to remark that this planting of stock fish in wild waters is a very important element in successful propagation. It is nothing short of criminal for the national and State governments to go to great expense in raising and shipping game fish to a consignee, and then have the latter carelessly dump them into the first water which appears most convenient and available to him. For instance, let us note the usual method which is followed in the Eastern States, particularly with regard to restocking public waters with brook trout (*Salvelinus fontinalis*). Upon written

GAME PROTECTION

applications of clubs or individuals indiscriminately, the game commissions undertake to deliver to the nearest railroad station to the waters intended to be stocked a certain number of trout. The fish are there turned over to individuals for planting. In the great majority of cases these individuals are public-spirited sportsmen with good intentions, but have they any practical knowledge of trout culture? Most of the States plant fry instead of fingerling trout, because the former are less expensive to propagate. Now, every trout culturist knows that in order to get results the planting of trout fry in wild waters is an art which can only be acquired after study, experience, and experiments. Yet these fry are turned over to the tender mercies of men who do not even profess to have any knowledge upon the subject. Is this not a very wasteful method, to say the least? The fact is, though, despite much discussion to the contrary, good results *may* be obtained from planting trout fry in wild waters if properly done, as the author has found from personal experience. Let the sportsmen, then, follow this common-sense procedure and advice, and he may accomplish something: Go over your territory in advance and study your waters carefully before

PROPAGATION OF GAME FISH

you apply for any fry. Never plant trout in a stream which goes dry at any season of the year, or is subject to freshets or great changes in temperature. Remember that as starter. Seek out small spring-fed streams, with a fairly low temperature, and find this out by frequently applying a thermometer to them. Those which have grassy banks, overhanging growth, gravelly bottoms, are well shaded, and where there is a sufficient fall of water to produce proper aeration of same, are the only ones to use for planting fry. Ascertain if trout customarily spawn in these streams. If they do, as the late Nelson Cheney would say, "This is *prima facie* evidence that it is a good place to plant your trout." Do not plant fry in the larger streams or the big trout will make short work of them. Plant near the head-waters of the stream, and look up all these matters carefully before applying for your trout. When the fish arrive be ready to receive them and prepared to convey them at once to the stream intended to be stocked. Keep them well aerated by dipping while *en route* to the planting grounds, and upon arriving there try the temperature of the water containing the fish and that to be planted. Do this by means of a thermometer

GAME PROTECTION

and never trust to guesswork about it. Then take ample time to bring the two within 3 degrees Fahr. of each other, when the planting should commence. Spread your fry along the stream, and don't crowd a large mass of them in one small pool or hole, but a number in each likely still place where there is natural food handy, with no prospects of the fish being disturbed. Do as above indicated and you will have at least some prospects of getting results—otherwise it is simply a waste of time and a pity to wantonly destroy valuable State property.

The fourth condition precedent to successful propagation is one which most of the States have taken up and are constantly working upon, usually to their advantage. Very generally the fish protectionists have secured the enactment of statutes which meet the demands. In case of wild trout, the safe minimum length has been fixed by culturists at 6 inches, but in order to be assured of the fish having spawned more than once in the stream before being taken, there appears to be a growing demand in many States to raise the length from 6 inches to 7 or even 8 inches. Unquestionably this is a step in the right direction. And in the case of the so-called "bag-limit" of catch for the

PROPAGATION OF GAME FISH

day, experience has shown that the only practical law which can be enforced is one which prescribes a specified number of fish as opposed to a quantity estimated by weight in pounds. The former plan acts as an incentive to the angler to take and retain only the larger fish, for very few fishermen will take pride in exhibiting a catch of trout, bass, or other game fish composed mostly of fingerlings and yearlings.

As to legitimate methods of catching game fish, sportsmen are very generally agreed that the only satisfactory and fair way is by rod, hook, and line.

It goes without saying that a book of this character does not call for a lengthy discussion or detailed description of artificial propagation of game fish; nor will we touch upon the work of propagating commercial fish or shellfish. It is the intention herein to discuss briefly a few problems relating to conservation and propagation of game fish alone, or those fancied and pursued by the angler for sport and food. Throughout the country this includes the salmon, trout, bass, pike, perch, and pickerel varieties. And in considering the subject it is well again to call to mind that the first essential necessary to maintain even fair

GAME PROTECTION

fishing is this: All the work which it is possible for the State and national hatcheries to do by way of planting the waters should be supplemented by all the fish which may come from natural reproduction, and it should be so provided by law that the fish have every opportunity to spawn unmolested.

Fish-cultural work and methods in the United States have long since entered into a great and growing field of usefulness. Experts have solved most of the problems connected with the business at the hatcheries; but the field of investigation to obtain the best results in planting game fish in wild waters appears to be still open, and theorists are constantly discussing this feature in publications devoted to the interests of sportsmen.

Here, then, is where the chief problem now lies, and it should not be left to novices to decide. It is universally recognized as the one important difficulty to overcome, and yet, strange to say, a majority of our leading fish culturists seem to have given the matter little or no attention in the past. They have devoted their entire time to solving hatchery problems, and at last these have been reduced to such an exact science that the

PROPAGATION OF GAME FISH

experienced culturist can now calculate in advance to a nicety his season's output and the total funds required for its development. But has he given any thought to the ultimate fate of his products when they are planted in public waters? We have already called attention to the careless custom of distributing game fish for planting. That point needs emphasizing, and it is to be hoped that experts will take such measures in the future as to prevent this excessive waste in every State in the Union. As we have said, in the past it has been the custom of culturists to assume that their full duty was done when they had raised a large, healthy stock of fish for planting. But when we look for permanent results and benefits from their work, it is certain that their task was only half finished. In the future they must abandon the hatcheries to their trained subordinates and seek the streams, ponds, and lakes, and there apply their talents. Their first labors have, indeed, been well performed, and it is confidently believed they will now take up these other important problems and solve them with equal success.

Now it is apparent that artificial propagation of game fish will not be limited in the future, but,

GAME PROTECTION

owing to changing conditions, it is sure to be extended. It is also a settled matter that propagation must go hand in hand with protective laws, and yet, in spite of this, the capacity of every hatchery in the country is taxed to its utmost to keep pace with the enormous demand for fish to supply the needs of those waters which have been fished out. Another problem in this connection is this: On account of deforestation the character of a considerable number of natural watercourses has been so changed in volume and temperature that certain species of game fish which formerly thrived therein have abandoned them for more congenial waters, or else they have been driven out by over-fishing and other physical causes. Attempts at restocking these waters have proved abortive, so the question arises whether it would be a provident measure to endeavor to find a substitute for the native fish in such places in order that the public may not be deprived of all fishing therein.

The difficulty appears to be, however, in many of these instances the sportsmen are not content to await a reasonable time for proper experiments to be made. They want fish and want them at once. Quick results are what they desire, and, if

PROPAGATION OF GAME FISH

it seems at all feasible to them that these may be obtained by planting a species foreign to the waters in question, the latter are used without hesitation. Now, it is plain that in many of these cases this proceeding is extremely unwise and a great detriment to future propagaton, for, once undesirable fish are consigned to a body of water, it is next to impossible ever to get rid of them thereafter, and they may extend their area by driving out and devouring all the native species for miles around. It behooves the sportsmen, then, to be cautious with these experiments and never decide the matter without full consultation with expert culturists. Of course, it is true there are cases in which replanting with a new species may be profitable, but each case should be carefully investigated before the step is determined upon. Some notable instances of these fundamental changes have occurred in the Eastern States where rainbow and brown trout have been substituted for the native brook trout, and the introduction into the mountain waters of the Western States of the brook trout of the East. The success of these experiments has varied according to the skill and good judgment displayed in advance.

GAME PROTECTION

Regular fish-culture work for public benefit is now carried on by each State of the Union and the national Government. The entire extent of these operations it would be impossible to estimate with accuracy, but to say that they are on an enormous scale is putting it mild. Take those of the United States Fish Bureau alone, and we are soon astounded at the figures. In 1908 there were 32 hatching stations used for administrative purposes alone, besides an immense number of auxiliary field stations. And by regular acts of Congress these have been constantly increased in the mean time. The land owned by the Bureau at that time comprised over 12,000 acres of an estimated value of \$225,000. The improvements on this land in buildings, ponds, and special equipment represented an investment of about \$1,000,000. The Division of Fish Culture had 225 civil-service employés whose aggregate annual salaries approximated \$200,000, and the annual appropriation for the support of the Division was \$275,000. During that year the Bureau distributed fish and fish eggs to the number of nearly three billions. Yet with all this output the stations could scarcely meet the demands made upon them, and these demands are growing each year. Plainly, then, this country

PROPAGATION OF GAME FISH

has entered upon an era of fish culture and artificial propagation which will soon astonish the world. That there have occasionally been complaints and disappointment with final results achieved, we conceive to be almost wholly due to the fact that our ablest culturists have hitherto refused to lend their energy and ability to the problems of proper planting of the hatchery products.

CHAPTER XVI

POLLUTION OF FISHING WATERS

ONE of the most difficult matters with which the fish protectionists of the country have to contend is the pollution of our fresh waters by waste and refuse from saw-mills, paper- and pulp-mills, tanneries, gas-works, and other manufactories, and general sewage. The damage inflicted upon the property of the public in this way is simply enormous. In the absence of reliable statistics, no approximate estimate can be given; but, when we contemplate the injury done at the sources of our water supply by cutting off the timber by improvident forestry methods—thus exposing the springs to the rays of the sun which causes rapid evaporation—and then observe innumerable portable saw-mills being established in all directions upon our best trout streams, dumping their deadly sawdust and mill waste into these waters, the wonder is that fish culturists and protectionists have not long since become disgusted and discouraged, and abandoned all hope of renewing the supply of fish in our fresh waters. Thousands of

POLLUTION OF FISHING WATERS

dollars are spent annually by the national and State governments in artificial propagation of game fish. The U. S. Fish Bureau is authority for the statement that the product of the fisheries of the United States has an annual value of \$57,000,000. Fish culture is carried on by the nation and the States on an enormous scale. Salmon, trout, shad, lobsters, and other important varieties are maintained almost exclusively by propagation and restocking. Fish from forest waters furnish \$21,000,000 worth of food yearly, a supply dependent on the preservation of the forests and the purity of the waters therein. Public waters are stocked at public expense. The fish which are already in the streams and those being planted are public property. This being conceded, can we intelligently advance the absurd proposition that the public is without a remedy for this nuisance, but must sit supinely by and see its interests invaded and its property wantonly destroyed?

We propose to discuss this question at some length and attempt to show that no State in the Union is without a remedy. So many and varied are the waste materials from different manufactories which are suffered to enter into and pollute our fresh waters, that we will confine our dis-

GAME PROTECTION

cussion to sawdust and refuse from saw-mills, but the ultimate conclusion is equally applicable to the other cases.

Many States have enacted statutes making it a misdemeanor to dump sawdust into their streams, while in others the influence of the manufacturers has been sufficiently powerful to prevent such legislation. With or without such statutes, however, the latest decisions of the highest State courts are to the effect that a person who places such quantities of sawdust into the waters of a State as to destroy the fish therein may be enjoined permanently from so doing by an injunction proceeding upon the part of such State conducted by its attorney-general. The party is also liable to criminal prosecution by indictment for committing a public nuisance in any State where the common law is recognized as having force and effect. This brings us, then, to the point which, in the past, has been the subject of controversy and has obscured the real issue. The question is (or rather was, until late years), Does the dumping of large quantities of sawdust into a stream constitute a public nuisance at common law? If it does, the procedure above given follows as correct according to modern practice in equity or at

POLLUTION OF FISHING WATERS

law. What is a common or public nuisance? The term has been comprehensively defined in volume xxi of the American and English Encyclopedia of Law, at page 683, in this way, and includes the accepted definition of all English and American authorities:

A common or public nuisance is one that affects the people at large, and is a violation of a public right, either by a direct encroachment upon public property or by doing some act which tends to the common injury, or by omitting to do, in the discharge of a legal duty, that which the common good requires. It does not necessarily mean one affecting the government or whole community of a State; it is public if it affects the surrounding community generally, or the people of some local neighborhood, as, for instance, the inhabitants of a village. Nor is it necessary that all persons in a community, or in fact that any individual whatever, should be actually annoyed or injured, but it is sufficient if there is a tendency to the annoyance of the public by an invasion of a right which all are entitled to exercise if they see fit.

It will be noted at once in the above definition that anything "That affects the people at large, and is a violation of a public right, by doing some act which tends to the common injury," or has "a tendency to the annoyance of the public by an invasion of a right which all are entitled to exercise if they see fit," constitutes a public nuisance. What of the fish of a State? Who has the

GAME PROTECTION

property in wild fish? What of the public's right of fishery in certain waters? It is settled doctrine in this country that the fish of a State belong to the people thereof, in their collective sovereign capacity. It follows, then, that wholesale injury or destruction of fish in certain waters of a State affects the property interests of the people at large, and is an act which tends to the common injury. By this reasoning we have now arrived at a question of fact, which it seems has only been fully established in late years—thanks to the efforts of some of our national and State fish culturists and scientists. That question is, Do sawdust and refuse from saw-mills injure, kill, or destroy fish? Formerly this was an issue of fact difficult to prove in a court of justice, but at present, from the personal experiments of scientists, it appears numerous experts in all parts of the country may be summoned who will testify in the affirmative in answer to this interrogation. Indeed, it is not too much to say that it is now a matter of common notoriety that sawdust does destroy fish and courts are apparently taking judicial notice of this fact.

We will here call attention to what a few authorities say upon this subject. In the Bulletin

POLLUTION OF FISHING WATERS

of the New York Zoological Society, Charles H. Townsend says:

Sawdust blackens the water and settles into the gravel beds, making them unsafe for fish eggs and fry. Government experiments have shown that sawdust in the water promotes the growth of fungus on fish eggs and kills both eggs and young fishes.

Dr. James A. Henshall, of the U. S. Bureau of Fisheries, puts it in this way:

Sawdust from saw-mills likewise settles on spawning beds so that if any fish are deposited they are smothered and the embryo perishes. Sawdust often becomes lodged in the gills of mature fish, causing inflammation and death. The waste matter from oil-refineries, paper-mills, starch-factories, or where any noxious substances are used or occur as a by-product, is very destructive to fish of all ages, and is a more potent factor in the destruction of fish food than any agency mentioned.

The Commissioners of Game and Fisheries of Massachusetts engaged experts to conduct experiments, and Commissioner Delano reported the results as follows:

When sawdust was allowed to lie in still water or in very slowly running water, the most disastrous effects followed the immersion of different animals in the poisonous mixture. Not merely did adult fish die in it, but fish eggs, fry, aquatic worms, small anthropods, animalcules, and water plants. Nor was the cause of death due to

GAME PROTECTION

suffocation from lack of oxygen, because when air was made to bubble rapidly through the solution the final results were the same, the only difference being that death was somewhat delayed.

Adult fish died in two or three minutes, fish eggs in a few hours, fry and minnows in from ten to fifteen minutes. Every living thing died in it, and, if one were to judge of its effects by laboratory experiments alone, then the prohibitory legislation needs no better defence.

Similar experiments were made by A. P. Knight, professor of animal biology in Queen's University, Kingston, Canada, with perch eggs, and he found that the eggs were killed by the poison contained in the water and evidently dissolved out of the sawdust.

A pamphlet was issued by the U. S. Fish Bureau, edited by Mr. M. C. Marsh, in 1907, entitled "The Effect of Some Industrial Wastes on Fishes," in which were reported the results of experiments by experts of the Bureau. Among other things it is demonstrated by these experiments that spruce strips or shavings (partly bark), spruce bark, and poplar chips and dust will all kill fish very readily.

Returning now to the legal question involved, we find a case in point in that of *People v. Truckee Lumber Company* (116 Cal. 397, 48 Pac. 37, 39 L. R. A. 581, 58 Am. St. Rep. 183), which came

POLLUTION OF FISHING WATERS

before the Supreme Court of California in 1897. This was an appeal from the lower court in which the attorney-general on behalf of the people of California had secured an injunction restraining the defendant lumber company from dumping sawdust into the Truckee River and thereby killing the fish in that stream. The Supreme Court affirmed the order of the lower court. In delivering the opinion of the higher court, among other things Van Fleet, J., said:

The fish within our waters constitute the most important constituent of that species of property commonly designated as wild game, the general right and ownership of which are in the people of the State, as in England it was in the king; and the right and power to preserve and protect such property for the common use and benefit is one of the recognized prerogatives of the sovereign, coming to us from the common law, and preserved and expressly provided for by the statutes of this and every other State in the Union. The complaint shows, that, by the repeated and continuing acts of the defendant, this public property right is being and will continue to be greatly interfered with and impaired; and that such acts constitute a nuisance, both under our statutes and at common law, is not open to serious question.

And the court accordingly held that:

1. Pollution of the waters of a river by means of refuse from a saw-mill, so as to destroy the fish therein, is a nuisance; 2. The State has a

GAME PROTECTION

right to protect fish in all streams through which they have freedom of passage to and from the public fishing grounds, although they flow over lands entirely subject to private ownership; 3. A riparian owner's exclusive right to fish in waters upon his own land does not include the right to destroy the fish he does not take; 4. Making the unlawful destruction of fish a misdemeanor and punishable as such does not preclude a civil proceeding to enjoin it as a nuisance; 5. The attorney-general may proceed, without the intervention of a private relator, to enjoin the unlawful destruction of fish.

It was held, in *West Muncie Strawboard Co. v. Slack* (Ind. 1904, 72 N. E. 879), that, where a manufacturing establishment in its operations discharges large quantities of deleterious substances, thereby polluting a stream and destroying the fish, and such injurious substances intermingle with the water and are deposited upon another's land adjoining the river, and render it less available for purposes of agriculture, for stock raising, and as a place of residence, such act constitutes a public nuisance.

Likewise it was held, in *Fitzgerald v. Fairbank* (C. A. (1897), 2 Ch. 96, 66 L. J. Ch. N. S. 529,

POLLUTION OF FISHING WATERS

76 Law T. Rep. 584), that, if water filled with sediment is discharged into a stream, polluting it, the person responsible therefor may be enjoined at the instance of another in whom the right to fish in certain portions of the stream is vested.

It is unnecessary in this country to resort to the doctrine of State socialism in order that the public may protect its right and interests in its fisheries. Among the maxims of our law is, "Regard for the public welfare is the highest law" (*Salus populi suprema lex*), and this and the restrictive one against the individual, that "You shall so conduct yourself and so enjoy your own as not to injure others" (*Sic utere tuo ut alienum non lædas*), are the foundation maxims of the police power of a State, and through this power associations of game protectionists should be able to secure all needed legislation which will fully protect the fish and game interests of the State.

CHAPTER XVII

FEEDING GAME DURING SEVERE WINTERS

ONE of the most important, as well as interesting and humane, tasks that the States officially, and individuals on their own private initiative, can undertake is to feed the birds and big game mammals during the time of food scarcity. It is both a work of love and necessity in the Northern States during severe winters when the deep crusted snow and ice incase the surface of the earth, thus cutting off the source of food supply from the game.

It seems at once cruel and inexplicable from a business stand-point, that the States have not taken official notice of this important duty in the past. When we read how the last great band of elk has regularly suffered from starvation during severe winters in the Northwest and only lately official cognizance and action taken relative to the matter, and when we consider too that each one of these lost elk possessed an intrinsic market value for food purposes of at least \$40, it is evident that some one has been derelict in his duty toward conserving our natural resources.

FEEDING GAME DURING WINTER

However, it is gratifying to note that of late years a number of States and many individuals and game clubs have become alive to these needs and have taken advanced steps to improve conditions of this kind. In 1905 Dr. Palmer reported:

The severity of the two winters, 1903-4 and 1904-5 caused such mortality among upland game birds that the feeding of quail, which had been previously done in a more or less desultory way, was taken up and carried on systematically in a number of States. In New Jersey and West Virginia the deputy game wardens were assiduous in the work, and in the District of Columbia the mounted police in the suburbs of Washington were impressed into the service. In Pennsylvania the game commission through the State zoologist sent 30,000 requests to farmers to feed the birds during inclement weather, and in Massachusetts the Fish and Game Protective Association distributed cards urging people to feed the quail, and furnished food without charge and instructions for placing it. The sportsmen of Spokane, Washington, issued a plea to farmers to feed the quail, and sportsmen in Maryland and farmers in Indiana organized associations for the purpose. In Massachusetts, Missouri, Nebraska, Virginia, and other States, more or less regular feeding of birds was undertaken by schools and by private individuals. In Illinois the State game commissioner authorized an expenditure of \$50 in each county and a total of \$3300 was actually expended for feeding game birds during severe weather. The result of this activity has been the preservation of thousands of birds that otherwise would have perished for lack of food, and the spread of interest in the subject and information collected concerning suitable food and methods of distributing it most effectively cannot fail to be of value in the future.

GAME PROTECTION

We will at once observe from this report that only one State game commission took official action during those two very severe winters, and that the efforts of clubs, schools, and individuals were confined principally to feeding the birds, with no thought, possibly, that those two seasons were the hardest on the deer and other big game of the country ever known. And why should not the States take systematic action on this line? It is, indeed, a narrow policy to spend thousands of dollars in protecting the game from depredations of mankind and make no allowance whatever for the inroads made by their natural enemies and the elements. The future well-equipped game department will have special funds and facilities provided for destroying vermin and feeding the wild life in trying times like those mentioned. Of course, it is quite evident that in the past many of the departments have lacked funds for this work, and doubtless others have never given the matter serious consideration; but the fact remains that there are some States which have ample means but utterly refuse to recognize the importance of this service. It is axiomatic that too much effort is being devoted to rearing more game, rather than to saving the supply which we now have.

FEEDING GAME DURING WINTER

The great hope of the future lies in interesting individuals and clubs in this work of feeding the game.

The author looks back upon his experience of feeding the deer, quail, and other game during several severe winters as among the most interesting events of his life. And he believes that if any individual is once engaged in this humane service his interest will never abate thereafter. Take one winter in particular,—that of 1904-05,—when the snow was between four and six feet deep on the Green Mountains of Vermont in the vicinity of his home. On one occasion he started out with his snow-shoes for a long tramp in search of deer which he knew must be yarded back in the fastnesses of the mountains. After a hard jaunt in a blinding blizzard we found ourselves amid the spruces and hemlocks on a high peak, but in a sheltered spot where the winds could not reach us. The skies cleared and the sun came out from behind the dark, heavy clouds, with its bright cold rays glistening and sparkling on the snow. Not a trace could be found of the deer for some time. Suddenly we noticed a movement above the snow line. It appeared to be waving brush at first glance, but upon closer inspection we dis-

GAME PROTECTION

covered the ears and horns of a large buck. He was in the deep snow lying on a slight mound, and his horns barely appeared above the surface. On carefully approaching, the animal arose and made a couple of desperate plunges and then fell back exhausted. It was plain the deer was famished and instant action was necessary to give relief. So the author took out his belt-axe, climbed into several maple and birch trees, and cut all the small boughs he could and threw them to the starving deer. Further search revealed six more deer in the same plight, and the bough cutting was repeated in each case. Examination also disclosed that all the small twigs within reach of the animals had been trimmed from every tree in the vicinity. As evening approached and we were compelled to start for the nearest lumber camp to spend the night, we had the unutterable satisfaction of seeing every one of those famished and helpless animals enjoying a good meal. After that we made regular trips to this yard, fed the deer coarse wild hay and browse, and carried that herd through until a thaw released them from their enforced imprisonment. Two things the author noticed at this time which are astonishing to the uninitiated,—how quickly the deer learn

FEEDING GAME DURING WINTER

what one's intentions are toward them, and what a very small amount of food it requires to keep the life in their bodies during these trying periods. We could not make visits oftener than every two or three days, and yet those deer subsisted almost entirely upon the browse and coarse hay we were able to furnish them. Also, it only required a couple of visits for them to understand what our mission was among them, and they always thereafter welcomed our approach with a blowing sound or stamping of the feet and shaking of "flags."

Again, during another winter, the author never enjoyed more keen delight than when he fed regularly three coveys of quail which he found in desperate straits. In this case cracked corn, coarse meal, and grain were supplied to the birds. During one of our visits we got a good farmer's wife interested in these little chaps simply by calling her attention to them, and made a line of feed from their cover to the home of this good woman. After that she took upon herself the duty of feeding them from her door-yard with meal, grain, and table refuse. The little creatures became so familiar with their meal hours that they were usually sitting on the neighboring fence on

GAME PROTECTION

the exact minute, and would fly into the yard immediately upon the appearance of the good housewife or when she would call them to her from her window. While they were feeding this woman could pass among them without disturbing them in the least, but, if a stranger appeared in the vicinity, whirr!!—off they went like a shot.

We repeat, then, that feeding the wild life during winter is one of the most interesting and absorbing tasks a person can undertake. It is also an excellent way to interest the children in bird-life and teach them the true place and value of these little friends of mankind. We have seen the deer following along log roads where hay has fallen from a sled *en route* to a lumber camp, and they pick up every spear, too. Others we have observed entering a farmer's back lot and feeding at his hay-ricks with perfect satisfaction. In most instances, we are happy to relate that the big heart of the farmer was touched by the famished appearance of his callers and he welcomed them to the feast. All this tends to bring out that touch of humanity which is dormant in every human bosom and endears us to the wild life around us.

FEEDING GAME DURING WINTER

This brings us to a brief discussion of proper food and ways and means of distributing it to the wild life. It is now a matter of common knowledge what and how to feed the small winter birds, and little need be said on that subject. During a cold spell we are often led to wonder how these little fellows manage to exist at all through the sleet, snow, ice, and storms, but they do, nevertheless, and seem to enjoy the experience at times. When the sun returns after days of wintry blasts, you will find them hopping about your door-yard, or in some neighboring cover, as bright and chipper as though nothing had happened and they had not experienced intense suffering—such is the fortitude of wild life. In most trying times these birds will more than appreciate it if one will hang out a piece of suet, or nail it in a tree. Or, if table scraps, bird seeds, cracked corn, frozen apples, and grain are placed in a sheltered spot where it cannot be covered with snow, the birds will soon discover it and come regularly to partake of it.

The feeding of quail must be carried on in a more systematic manner. Dr. Judd, of the Biological Survey, gives some good advice in this line when he says:

GAME PROTECTION

Wheat and corn are the best food, and should be scattered, if possible, among the briars where the birds are safe from hawks. Bobwhites have been known to feed with chickens in barn-yards. By a little forethought land-owners and sportsmen can easily make winter provision for their birds. Sumac bushes should be left along hedge-rows and the edge of woodland to furnish food that is always above the snow and lasts well into spring. Twelve bobwhites collected in December in North Dakota had made nine-tenths of their food of sumac, having eaten from 50 to 300 berries each. A similar use, in coast regions, of the bayberry and wax myrtle has been noted. Their berries, as well as those of the sumac, last till May, and the plants should always be spared by every one who is interested in the welfare of the bobwhite. Smilax, affording little food but fine cover, and wild roses, giving both food and cover, are also valuable. Blackberry thickets, young pine woods, laurel, and holly furnish safe retreats from enemies.

These suggestions are principally for farmers, but for the work to be conducted by the State or clubs a regular system should be studied which has now been well perfected.

For supplying wild fowl with suitable food Mr. W. L. McAtee, of the Biological Survey, suggests the following as most important :

The vegetable food of wild ducks includes a large variety of plants, of which three have been found of especial importance. These three are wild rice, wild celery, and pondweeds. Wild celery beds and wild rice marshes have long been recognized as important features of ducking

FEEDING GAME DURING WINTER

grounds. Less widely known, but not less important, are the submerged plants known as pondweeds. In the case of 16 of the most important species of game ducks whose stomachs have been examined, wild celery, wild rice, and pondweeds collectively compose 25.31 per cent. of the total food. . . . Wild rice in every stage of its growth is eaten by one or another of the North American ducks and geese, and practically all of them feed on its ripened grain. It is the staple fall food of many ducks in the numerous rice marshes of the eastern part of the United States. Ducks obtain seeds mainly from the bottom in shallow water, where they have fallen into a bed of soft muck to await germination.

These plants may now be obtained from regular dealers, and there is no reason why any State or game club interested in the wild fowl should not go at it systematically and plant their ponds and marshes full of this excellent food.

For feeding elk and deer, Dr. D. E. Lantz, of the Biological Survey, who has made a special study of deer farming, gives this information, which, as applied to deer, the author has found by experience to be correct in every detail:

Hay and corn fodder are excellent winter forage, but alfalfa hay has proved to be the best dry food for both elk and deer. A little oats or corn—whole or chopped—may be fed each day. Elk are fond of corn, and feeding it affords excellent opportunities for winning their confidence and taming them. . . . Coarse hay full of weeds is preferable to timothy or other tame hay, except alfalfa. Of clover hay, deer usually eat the blossom heads greedily, but waste

GAME PROTECTION

the other parts. In winter feeding is necessary everywhere and in the northern half of the United States shelter of some kind should be provided.

In the above Mr. Lantz refers to deer on game farms. They will find their own shelter in the wild state, but nevertheless, even in that condition, they must have special provision made for them in time of deep snows and severe winters, or they will inevitably perish in great numbers. If they can find a good wintering place near settlements, special efforts should be put forth by the State officers to give them protection in such quarters, or otherwise large gatherings of deer in such handy and narrow territory always act as a special incentive and invitation to the unscrupulous game butchers to go forth and slay them. The animals are more or less helpless under these conditions, and they fall easy prey also to mongrel dogs, wolves, coyotes, cougars, wild-cats, and other "varmint." In the mountains of New Hampshire, Vermont, and New York, it is believed, as many deer, or more, are lost under these conditions during a severe winter as are killed by the hunters in the regular open season. The matter is pressing and calls for immediate action upon the part of the State game departments.

CHAPTER XVIII

HUNTING ACCIDENTS

ONE of the most alarming things in connection with the sport with rifle and gun in recent years is the number of serious and fatal accidents, and there is no question but what these are increasing from year to year. It has already become a serious national problem. The number of fatalities of late is simply appalling. No State or section of the country seems immune. The Eastern States appear to furnish the largest number of cases, although Wisconsin and Michigan have long held first place in this respect. Maine and New York, however, seem to covet that honor. The question is, What is the cause of this increase? Undoubtedly it is due to the popularity of the sport, thus attracting a greater number of people who are unacquainted with and unskilled in the use of firearms, and the increased deadliness of modern weapons. But what is the remedy, and how can these conditions be changed? Clearly, the conditions cannot be changed, and the remedy is educa-

GAME PROTECTION

tion in the use of firearms. Many persons think the remedy lies in certain legislation, making such accidents high crimes, and punishable as such; but this course is certainly doubtful, to say the least. Evidently such persons are not informed as to what the law of the land in that respect already is in this country. If the accident is caused by gross carelessness or criminal negligence, the one who causes it is liable at law, either in a civil action or by criminal prosecution, without any further legislation upon the subject—all depending upon the circumstances of each case. The difficulty, however, lies in being able to prove to the satisfaction of a jury that gross carelessness or criminal negligence existed. It is a well-known rule of law that killing by the accidental discharge of a weapon during its unlawful or improper use, or in doing an unlawful act, constitutes involuntary manslaughter; but the act must be such as might, by at least some appearance of probability, cause the homicide. Thus, it has been held that the mere handing of a pistol to another with the muzzle pointed toward him does not constitute such an act as will make the killing of such a person, in consequence of that act, man-

HUNTING ACCIDENTS

slaughter. (Fitzgerald v. State, 112 Ala. 34.) Another matter is, the burden of proving criminal negligence is upon the prosecution in such cases, and, where the slayer and his victim are alone in the woods at the time of the act, it is almost impossible to prove this necessary criminal element, and juries are averse to punishing one for an accident.

In order that the reader may obtain a fair idea of the extent of these fatalities and serious injuries to the person in the last decade, we give below a few unofficial reports made in the public press of the country at the close of several annual hunting seasons.

A total of twenty-three were killed and fifty-three injured in Wisconsin and the Upper Peninsula of Michigan this year, against fifty-one killed and thirty-six wounded when the deer-hunting season was about to close last year. To the forest fires last fall is ascribed the reason for the smaller toll of the dead and injured in that the underbrush was burned away and the forests made more open.

A comparative table of such accidents for seven years follows :

GAME PROTECTION

Year.	Dead.	Injured.	Total.
1901	17	32	49
1902	10	16	26
1903	14	21	35
1904	16	7	23
1905	17	13	30
1906	7	9	16
1907	51	66	117
1908	23	33	56

The hunting season of 1910 cost 113 lives. This is considerably more than were killed during any previous season of record. The loss of life in 1909 was 87; in 1908, 57; in 1907, 82, and in 1906, 74.

The number of injured in 1910, however, is smaller than during 1909, only 81 having been hurt, against 104 for the season of 1909.

It is likely the death list this year will be considerably increased later by reason of the fatal termination in the cases of many of the injured.

"Mistaken for a deer" and "shot by a companion" continue to lead as the reasons for the shooting of hunters. It is small wonder there are so many cases of hunters being mistaken for game, as in some States the forests practically are alive with hunters during the season. The State game warden of Michigan estimated that there were no fewer than 21,000 hunters in the upper

HUNTING ACCIDENTS

peninsula this year. Carelessness in the handling of guns was responsible for most of the cases where hunters shot themselves.

Thirty human lives were lost in New England and four in the Canadian province of New Brunswick as a direct result of the hunting season so far as big game is concerned. Of the victims, five were shot in mistake for deer, twelve were killed by the accidental discharge of their own guns, fourteen by accidental firing of guns held by companions or by stray bullets, two were drowned, and one died from exposure.

Maine furnished fifteen victims, Massachusetts seven, New Hampshire three, Vermont and Connecticut two each, and Rhode Island one. In addition more than twenty persons received more or less serious injuries.

Maine's moose-hunting season closed November 30, with a considerably better record than was made in 1910. The deer season closed on December 15, and the number of animals killed nearly if not quite equal that of the previous year (1910), although the season opened poorly on account of unfavorable weather.

The toll of human life also has been greater than in 1910, when eight persons were killed and

GAME PROTECTION

20 seriously injured in one way or another connected with hunting, the list up to the close of the moose-hunting season comprising 11 deaths and eight serious injuries, with an unknown number of minor hurts. Contrary to the old rule, only two of the 11 who lost their lives this fall were mistaken for deer. The several causes of death were: Capsizing of canoe, 2; mistaken for deer, 2; accidental discharge of hunter's own gun, 2; accidental discharge of gun in hands of another person, 2; killed by stray bullet, 2; "didn't know it was loaded," 1.

It is claimed by the game authorities of Michigan and Wisconsin that, as the open season for big game is short in those States and the hunting is confined in large part to narrow territory, the rush of hunters from the larger neighboring cities of Chicago, Milwaukee, Detroit, and other places into this game country is simply amazing, and comprises men, women, and even children, most of whom are totally unfamiliar with the use of fire-arms, and, therefore, under such circumstances accidents are inevitable.

The customary reasons and causes of these fatalities and maimings are assigned about as follows: Accidental discharge of weapons when

HUNTING ACCIDENTS

pointed toward companions; shooting at objects not clearly seen when nervous and excited; stray bullets from high-power rifles which fly a long distance; intoxicated and stumbled, or carelessly handled or neglected loaded guns; explosion of cheap guns while using dangerously heavy charges therein; glancing bullets and "Didn't know it was loaded"; pulling loaded guns from a boat by the muzzle, or looking down the barrel of same; weapons handled by inexperienced men and children.

In some cases we find the cause of the accident directly due to violations of the game laws, such, for instance, as indifference to the law relative to deer having horns. Vermont was the first State of the Union to consider in part the safety of person in enacting a deer law. In that State several years ago it was provided that no deer should be shot during the open season unless it had horns at least three inches in length. While this provision of law was primarily intended to protect the female deer, yet the author, who was the original advocate and draftsman of this measure, had in view also the safety of human life by thus compelling each hunter to first ascertain whether his quarry had horns of sufficient length before cast-

GAME PROTECTION

ing after it the fatal bullet. In the records of the game department of Vermont there were formerly on file two letters from hunters in which it was stated by each that he owed his life to this provision of the law. Also, the writer now has in his possession documentary evidence of the same character from three others in which it is affirmed that, owing to this same statute and the strict manner in which it was enforced in Bennington County in that State, the signers are indebted for being free from the brand of Cain for having slain their fellow-beings. This alone makes that law worth while, and, although it was repealed in 1908, yet two years later it was re-enacted and still remains on the statute book of Vermont. And we make bold in saying that it will there remain for many years, in the mean time to be joined by similar provisions in about every State in the Union where deer abound and the law permits their being killed. This is really about the only legislation which can be devised by the wit of man, except the provision compelling hunters to array themselves in red or other bright colors, that will tend to lessen the horrors of the open season for big game. But, of course, it is of no value as a life-saver unless rigidly enforced and a heavy penalty provided for its transgression.

HUNTING ACCIDENTS

As to the civil liability of a person who shoots another by accident while hunting, many recent cases in our highest courts have served to make the matter plain. For instance, the whole situation is well summed up in a recent case in California (*Rudd v. Byrnes*, 156 Cal. 636). It was there held that due care (such as is required by law) for the safety of others is not exercised by a hunter who blindly fires at a moving object in the underbrush, which he fails to ascertain to a certainty is game, but which he supposes is a deer, when in fact it turns out to be a human being, and in that case his hunting companion. In giving its opinion, among other things, the California court said:

One who causes injury to another by discharging a fire-arm must, in order to excuse himself from liability, show that he was absolutely without fault.

And the court quoted the well-known rule of law in such cases, that,

As fire-arms are extraordinarily dangerous, a person who handles such a weapon is bound to use extraordinary care to prevent injury to others, and is held to strict accountability for a want of such care.

The above rules will usually comprehend any liability wherein the hunter has been so careless as to deserve either civil or criminal punishment.

CHAPTER XIX

FIGHTING FOREST FIRES *

It is impracticable here to give detailed and definite instructions to cover local fire-fighting problems; on the other hand, conditions so vary that no set of rules can be given that will apply universally. Eastern and western forests differ, and there are regional differences within these two great areas. Altogether there are eight distinct areas as regards forest fires, each of the eight having peculiar features that distinguish it from the others. Those in the East include the spruce forests of the Northeast; the wood-lot that is characteristic of the New England and Middle Atlantic States, and the Ohio Valley region.

The principal forest regions of the Northeast are characterized by dense stands of conifers, and by open hard-wood stands with heavy undergrowth. The ground is covered, for the most part, with a thick layer of humus or "duff," which may carry fire for a long time and not show it. Forest fires in this region are most common

* From Report of National Conservation Commission.

FIGHTING FOREST FIRES

in early spring—April and May—but are likely to occur also, though with less frequency, in the early fall—September and October. In the spring the ground is covered with a thick layer of dead leaves. With the advent of the warm sun and the south wind these become so dry that they ignite easily and burn quickly, with a blaze fierce enough to communicate itself to the dry refuse of old cuttings and to dead trees.

Two classes of fires are recognized in this region, ground and crown fires. Where there is only a light surface fire, the most common and least expensive way is to put it out with green branches, wet sacks, or wet blankets. This method is effective if the fire is attacked early enough, and if great care is used to see that the fire is actually all out and not driven from the surface down into the duff.

Where the fire is more severe and there is plenty of water, a common method is to institute a "bucket brigade," whose members pass buckets of water from a stream to the fire line. The water is rarely used against a main fire, because there it would be largely wasted, but rather to quench numerous small blazes that are started by sparks from the big one.

GAME PROTECTION

Where water is unavailable, sand or earth is thrown on the small blazes. This is harder work, but is more effective, unless the earth used is composed of humus or vegetable mould. In that case it apparently smothers the fire but eventually adds fuel to it.

The best way, however, to stop a ground fire, and often the only sure way is by trenching. This is simply digging down to the mineral soil and throwing the dirt toward the fire. This is a costly and a hard task; to be successful it must be done so far ahead of the fire that the mineral soil can be reached before the fire gets a chance to cross over. A faster method, but not so sure, is to dig holes in a line a rod or so apart and spread the dirt along the ground between the holes. Sometimes furrows may be plowed or fire lines may be cleared ahead of an advancing fire.

Crown fires cannot be attacked directly unless the fire is small and the conditions unusually favorable. The flames travel so rapidly and jump such long distances that nothing can be done except a long way in front of them. Lines may be cleared along the edges of the fire to prevent its spread laterally. Back firing is an extreme to be made use of when all other methods fail, and then

FIGHTING FOREST FIRES

only under the direction of an experienced person. The danger, particularly when there is a wind, is that the back fire may spread and add its fury to that of the original fire. When it cannot be started from and held to a fixed line and forced back toward the main fire, a modification may be adopted to burn over an extended area far ahead of the on-coming blaze, which will go out from lack of fuel when it reaches the burned-over portion. In order to minimize the danger of having the precautionary fire get beyond control, the area to be burned may be divided into small sections, and each fired separately. This plan is analogous to the dynamiting of blocks of buildings to stop a city conflagration, and should not be resorted to except in extreme cases where valuable property is at stake.

It has been estimated that one-third of the total stand of timber in the United States is in farmers' holdings. The wood-lot is thus an important part of the forest resources of the country.

The successful protection of the wood-lot from fire requires three conditions: Proper organization, efficient watching, and facilities for fighting fire. By organization of a wood-lot for fire protection is meant the establishment of such a condi-

GAME PROTECTION

tion that fires may most easily be prevented from starting, and that fires which do start may most readily be extinguished. The measures usually practical in this wood-lot organization are, first, the disposal of tops and dead brush, and, second, a construction of fire lines. A fire in leaves may be put out entirely, but if tops, old logs, and snags lie scattered about, the fire may smoulder in them for a long period and remain a constant menace after the main fire is out. It is especially desirable to prevent the accumulation of inflammable trash near roads and paths where smokers and hunters are liable to set fires.

The best fire lines for the wood-lot are roads and paths. Their first purpose is to make the different parts of the woods readily accessible. In a city the effectiveness of a fire department depends on the degree of quickness it can reach a fire. In the same way, the forest traversed by roads and paths by which an incipient fire can be reached quickly is in the best condition for protection. Roads and paths will check an ordinary fire. Many fires are absolutely stopped by a dirt road, and small fires will not cross a dirt trail. If back firing is absolutely necessary, it is best done from a road or path. An opening in the forest may be

FIGHTING FOREST FIRES

a vantage point from which to fight fires, but as a check to fire it is only slightly better than no opening unless cleared entirely of inflammable material. Ordinarily, if the roads are adapted to use as fire lines, and if there are roads or trails near those boundaries where danger exists, the wood-lot is well organized.

Constant watchfulness during the danger season is absolutely necessary. A wood-lot that is not watched is not protected. Usually a wood-lot is in close proximity to the cultivated portion of the farm, and it involves very little additional trouble to watch for fire.

Much depends on the location of fire lines. They should not be expected ordinarily to stop a fire, but rather serve as an indispensable vantage point from which to back fire or to beat out flames which jump over. Fire lines should take advantage of topographical features and be located where fires are naturally reduced in their progress of severity. This is usually on the crests of ridges or where the brush or forest is open or the ground bare. An important consideration in all fire-line construction is to plan for the removal of all dead stubs for a distance of at least 200 feet on each side. In case of fire these stubs

GAME PROTECTION

ignite readily, and the wind carries sparks and firebrands from the tops for long distances.

Closely associated with fire lines is the question of back firing, and plans, based on local conditions, should be made for this use of fire in fighting fire. Back firing should be resorted to only when absolutely necessary, and never save under competent supervision.

If fire should get a good start in old slashings or logging works, it might be useless to make a fight until it reaches a skid road or stream, or possibly green timber. If it cannot be checked until it reaches green timber, it is best to go back far enough into the timber so that the heat and smoke will not drive out the fire-fighters. If there is no road or skid road in the timber where a stand can be made, and if the ground is fairly level, a trail should be cut around the head of the fire from 10 to 20 feet wide, and brush, rotten wood, moss, etc., cleaned out and piled on the side next to the fire. A back fire should then be started. In back firing it is most essential to see that the fire does not creep or blow back across the trail. It is dangerous to back fire unless enough help is available to control it. When fire strikes the green timber it will probably burn some tree tops, but

FIGHTING FOREST FIRES

when the tops and brush along the edge of the timber have been burned, it will die down and creep in the moss and brush on the ground and it can then probably be stopped at the trail. If after the fire has died down, there are any dead snags left standing with fire near the top, they should be cut down.

Fire rushes uphill, crosses the crest of the hill slowly and is more or less checked in travelling down. If the fire is running uphill, especially with the wind behind it, it may be impossible to handle it until it reaches the top. If such is the case the best place to cut the trail is just beyond the crest of the hill, where there will be less smoke and where the fire will naturally be checked in running downhill.

The fire should be watched until it is entirely out. The first fire burns above the surface of the ground, and there is apt to be fire left smouldering underneath for days. The trail should be watched as long as smoke can be seen, and as soon as it cools down what fire there is left should be dug out. Dry sand or earth is usually as effective as water (and much easier to get) when thrown on a fire. Fires burn faster in the heat of the day and are more easily controlled at night or in the early morning.

APPENDIX

CONSTITUTION AND BY-LAWS FOR GAME CLUBS

GAME protective associations are being formed all over the country and it is an encouraging sign of activity in the interest of conservation of the wild life. In many places, however, the members of these organizations experience some difficulty in devising and preparing a suitable constitution and by-laws for their government in keeping with the purpose of their association. A league of this character was formed in Vermont a number of years ago, and adopted what appears to be an ideal constitution and set of by-laws. Since their adoption these have required little or no amendment, and the machinery of the club has worked so smoothly and satisfactorily that its officers have had numerous requests from all parts of the country for copies of their fundamental law. They form a first-class model for adoption by any similar organization, and we give them for that purpose.

APPENDIX

CONSTITUTION

ARTICLE I

NAME

This organization shall be called the.....Fish and Game League.

ARTICLE II

OBJECTS OF THE LEAGUE

The objects of this League shall be: to procure and enforce suitable laws for the protection and preservation of food fishes, game, song and insectivorous birds; the promotion of fish culture; the introduction of new species and varieties of fish, game, and useful birds; to disseminate information relating thereto, and to procure the revision and codification of the laws on these subjects when necessary.

ARTICLE III

GOVERNMENT

The officers of this League shall consist of a President, seven Vice-Presidents, a Treasurer, Secretary, an Executive Committee of fourteen members, one in each county, and a Committee of three on Membership, who together shall constitute a Board of Management, and an Auditing Committee of three. The officers shall be chosen by ballot at the annual meeting, and shall hold their respective offices for one year, and until others are chosen in their stead.

ARTICLE IV

DUTIES OF OFFICERS

The duties of the officers shall be such as pertain to their respective offices in similar societies. The President shall be *ex-officio* chairman of the Board of Management. The

GAME PROTECTION

Treasurer shall pay, from the funds of the League in his hands, all bills duly approved by the President and Secretary. He shall collect all bills and assessments due the League, and shall submit his account for examination to the Board of Management when requested by them. He shall also, with the approval of the Executive Committee, take care of, and invest the funds of the League. The Auditing Committee shall audit the Treasurer's accounts, and they shall examine the vouchers and receipts; and the Treasurer shall report, in detail, the disbursements and receipts of the League.

ARTICLE V

BOARD OF MANAGEMENT

The Board of Management shall have all the powers of a Board of Directors, and shall hold all the property, effects, and other assets of the League in trust for the benefit and enjoyment of the members thereof, and shall have the management and control of the same, and exercise a general superintendence over the affairs of the League.

ARTICLE VI

MEMBERSHIP

Any person may become a member of this Association by the vote of nine-tenths of the members present, and he shall sign the Constitution and By-Laws; provided that persons who have been elected members are permitted to forward their names on slips of paper to the Secretary, requesting their signatures to be placed on the book of membership. No person shall be considered a candidate until he has been properly vouched for by a member of this League in good standing, and has been approved by the Committee on Membership. Any member may be expelled by a vote of three-fourths of the members present; provided

APPENDIX

the aforesaid member shall have been notified of such intended action at least two weeks before the vote of expulsion is passed. Propositions for membership shall not be acted upon until the admission fee has been paid to the Treasurer, or its payment has been vouched for by the member making said proposition.

ARTICLE VII

QUORUM

Seven members shall constitute a quorum of this League or Board of Management for the transaction of business, except for the expulsion of a member or amendment of the Constitution and By-Laws, for which fourteen members of the League shall constitute a quorum.

ARTICLE VIII

AMENDMENTS

No alteration or amendment of the Constitution or By-Laws shall be made, unless the proposed alteration or amendment shall have been presented at a meeting of the League.

ARTICLE IX

FISCAL YEAR

The fiscal year shall commence on the second Wednesday in November of each year and all annual assessments shall be due at that time.

BY-LAWS

ARTICLE I

ADMISSION FEE

Section 1. The admission fee shall be Three Dollars, the payment of which shall exempt the members from

GAME PROTECTION

assessment for the current fiscal year, and any person proposed within three months before the annual meeting in each year shall be exempt from the assessment of the succeeding fiscal year. Any member not paying his annual assessment within one year shall cease to be a member of this League, and his name shall be stricken from the list of members, unless sufficient cause is shown for non-concurrence in the aforesaid action, and no remission of unpaid assessment shall be made except by a majority vote at a meeting of the Board of Management or of the Association. Two dollars shall be the annual assessment.

Sec. 2. Branch Clubs. Local clubs of five or more members can become branch clubs to the League by appointing one or more of their members to join the latter organization as their representatives; said clubs shall be entitled to one or more votes in the League according to the membership representation of each. Said clubs shall receive all benefits accruing to individual members. All correspondence and papers between the Secretary of the League and branch clubs to be transmitted through the Secretary or representative of aforesaid clubs.

Sec. 3. The admission fee for branch clubs shall be \$5.00 and the annual dues \$3.00.

ARTICLE II

LIFE MEMBERSHIP

The payment of fifty dollars shall constitute a life membership, and shall exempt from all future assessments.

ARTICLE III

HONORARY MEMBERSHIP

Persons distinguished for their scientific knowledge in matters of interest to this League, or who have contributed

APPENDIX

greatly to further its objects, may be elected honorary members at any meeting, on recommendation by the Board of Management, but no name shall be presented for honorary membership until it has been voted upon at a regularly called meeting of the said Board of Management and received a majority of votes recommending the same; and any one admitted under this article shall be exempt from the payment of the admission fee and all assessments, but shall have no vote in the proceedings of the League, unless said honorary member shall have been previously a member of the League, in which case he shall have all the rights and privileges of other members.

ARTICLE IV

CORRESPONDING MEMBERS

Any person recommended by a committee on publication of the Board of Management may be elected a corresponding member of the League, at any regular meeting thereof. Such member shall be exempt from payment of any assessment, and shall not be entitled to vote on any question coming before the League.

ARTICLE V

MEETINGS

There shall be held an annual meeting of the League during the month of November of each year, and such other meetings as the League or Board of Management may direct. Annual meetings shall be called by the President, and special meetings shall be called by the President, or Executive Committee, or on the written application of five members, stating the object of said meeting.

GAME PROTECTION

ARTICLE VI

ORDER OF BUSINESS

1. Reading the records of the last meeting.
2. Reading the report of treasurer.
3. Proposals for membership.
4. Reports of committees.
5. Elections.
6. Unfinished and new business.
7. Reading of communications.

ARTICLE VII

BOARD OF MANAGEMENT

A stated meeting of the Board of Management shall be held when directed by the President, or on application of five members of said board to the secretary to be called and notified by the Secretary, the time and place of said meeting to be fixed by the President.

THIS BOOK IS DUE ON THE LAST DATE
STAMPED BELOW

AN INITIAL FINE OF 25 CENTS
WILL BE ASSESSED FOR FAILURE TO RETURN
THIS BOOK ON THE DATE DUE. THE PENALTY
WILL INCREASE TO 50 CENTS ON THE FOURTH
DAY AND TO \$1.00 ON THE SEVENTH DAY
OVERDUE.

APR 9 1934

SEP 17 1935

16 May 51 HF

12 Jun 51 LI

SENT ON ILL

AUG 04 1995

U. C. BERKELEY

916
fire was on

YC 19784



